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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 23 at 9:00 am

WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12920 of June 10, 1994

Prohibiting Certain Transactions With Respect to Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775, it is hereby ordered as follows:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order: (a) Any payment or transfer of funds or other financial or investment assets or credits to Haiti from or through the United States, or to or through the United States from Haiti, except for:

(i) payments and transfers for the conduct of activities in Haiti of the United States Government, the United Nations, the Organization of American States, or foreign diplomatic missions;

(ii) payments and transfers between the United States and Haiti for the conduct of activities in Haiti of nongovernmental organizations engaged in the provision in Haiti of essential humanitarian assistance as authorized by the Secretary of the Treasury;

(iii) payments and transfers from a United States person to any close relative of the remitter or of the remitter's spouse who is resident in Haiti, provided that such payments do not exceed $50 per month to any one household, and that neither the *de facto* regime in Haiti nor any person designated by the Secretary of the Treasury as a blocked individual or entity of Haiti is a beneficiary of the remittance;

(iv) reasonable amounts of funds carried by travelers to or from Haiti to cover their travel-related expense; and

(v) payments and transfers incidental to shipments to Haiti of food, medicine, medical supplies, and informational materials exempt from the export prohibitions of this order;

(b) The sale, supply, or exportation by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of any goods, technology, or services, regardless of origin, to Haiti, or for the purpose of any business carried on in or operated from Haiti, or any activity by United States persons or in the United States that promotes such sale, supply, or exportation, other than the sale, supply, or exportation of:

(i) informational materials, such as books and other publications, needed for the free flow of information; or

(ii) medicines and medical supplies, as authorized by the Secretary of the Treasury, and rice, beans, sugar, wheat flour, cooking oil, corn, corn flour, milk, and edible tallow, provided that neither the *de facto* regime in Haiti nor any person designated by the Secretary of the Treasury as a blocked individual or entity of Haiti is a direct or indirect party to the transaction; or

(iii) donations of food, medicine, and medical supplies intended to relieve human suffering; and

(c) Any transaction by United States persons that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For the purposes of this order, the definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the effective date of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order shall take effect at 11:59 a.m., eastern daylight time on June 10, 1994.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
June 10, 1994.

[FR Doc. 94–14582
Filed 6–10–94; 3:40 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks on these sanctions and his message and memorandum to the Congress on Haiti, see volume 30, issue 23 of the *Weekly Compilation of Presidential Documents*.

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG08

Prevailing Rate Systems; Change of Lead Agency Responsibility for the Miami, Florida, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to transfer lead agency responsibility for the Miami, Florida, appropriated fund Federal Wage System (FWS) wage area from the Department of Defense (DOD) to the Department of Veterans Affairs (VA). The FWS employment at Homestead Air Force Base (AFB), the current host installation for the Miami wage area, has declined since Hurricane Andrew in 1992 and is expected to decline further. The VA Medical center is now the largest single employer of FWS employees in the wage area, has the resources to carry out local wage surveys in the area, and is willing to assume responsibility as lead agency.

DATES: This interim rule becomes effective on June 14, 1994. Comments must be received by July 14, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: DOD is the lead agency for the Miami, Florida, appropriated fund FWS wage area, and Homestead AFB is the host activity for the local FWS wage survey. FWS employment at Homestead AFB has declined since the destruction caused by Hurricane Andrew in 1992 and is expected to decline further. The next largest DOD activity is located in Key West, Florida, and is not a practical alternative to function as a host activity. DOD has requested that VA assume lead agency responsibility. The VA Medical Center is now the largest single employer of FWS employees in the appropriated fund wage area and is willing to assume responsibility as lead agency. Both DOD and VA request that the transfer of lead agency responsibility for the Miami appropriated fund wage area become effective as soon as possible. Pre-survey activities for the next full-scale wage survey, scheduled for January 1995, begin in mid-1994. The Federal Prevailing Rate Advisory Committee has reviewed and concurred with this proposed change.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because pre-survey preparations for the January 1995 wage survey must begin shortly.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B [Amended]

2. Appendix A to subpart B is amended for Miami, Florida, by removing the lead agency listing "DOD" and adding in its place "VA".

[FR Doc. 94–14274 Filed 6–13–94; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Jurisdictional Changes

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Notice of final amendments to rules and regulations.

SUMMARY: This document amends the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority to provide for changes in the geographical jurisdictions of the seven Regional Directors concerning unfair labor practice charges and representation petitions.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Acting Deputy General Counsel, (202) 482–6680 extension 203.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR part 2400 *et seq.* (1993). Appendix A, paragraph (f) of the rules and regulations sets forth the geographic jurisdictions of the Regional Directors of the Authority.

In the best interest of maximizing the resources within the Office of the General Counsel and efficient and effective case processing, the General Counsel and the Authority published on May 2, 1994 at 49 FR 22537–22538, a proposed rule to realign the

geographical jurisdictions of the Regional Directors to distribute the caseload, based on historic perspective, among the seven Regional Directors so that the seven regional offices have a substantially similar size caseload. No comments were submitted.

The change in geographic jurisdiction is in conjunction with the General Counsel review of regional office staffing patterns with the goal of achieving parity in the number of employees per region. The change will result in equalizing the work per regional office employee. The Office of the General Counsel will transfer cases between regions on a recurring basis, as necessary, based on caseload and staffing so that Office of the General Counsel resources will be utilized to the fullest extent.

Executive Order 12291

This proposed regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established by the Order.

Regulatory Flexibility Act Certification

The General Counsel has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The proposed regulation contains no information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

For the reasons set out in the preamble and under the authority of 5 U.S.C. 7134, Appendix A to 5 CFR Chapter XIV is amended by revising paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
Alabama	Atlanta.
Alaska	Denver.
Arizona	Denver.
Arkansas	Dallas.
California	San Francisco.
Colorado	Denver.
Connecticut	Boston.
Delaware	Boston.
District of Columbia	Washington, DC.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90 degrees East.	San Francisco.
Idaho	Denver.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Chicago.
Kansas	Denver.
Kentucky	Chicago.
Louisiana	Dallas.
Maine	Boston.
Maryland	Washington, DC.
Massachusetts	Boston.
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri, Eastern (Scotland, Knox, Monroe, Audrain, Shelby, Callaway, Maries, Osage, Pulaski, Texas and Howell counties and all counties east thereof).	Chicago.
Missouri, Western (all counties west of Scotland, Knox, Monroe, Audrain, Shelby, Callaway, Maries, Osage, Pulaski, Texas and Howell counties).	Denver.
Montana	Denver.
Nebraska	Denver.
Nevada	Denver.
New Hampshire	Boston.
New Jersey	Boston.
New Mexico	Denver.
New York	Boston.
North Carolina	Atlanta.
North Dakota	Denver.
Ohio	Chicago.
Oklahoma	Dallas.
Oregon	San Francisco.
Pennsylvania, Eastern (all counties except Erie, Crawford, Mercer, Lawrence, Beaver, Allegheny, Washington, Greene, Fayette, Somerset, Westmoreland, Warren, Indiana, Butler, Armstrong, Clarion, Venango, Forest, Cambia, Elk and McKean).	Boston.
Pennsylvania, Western (Erie, Crawford, Mercer, Lawrence, Beaver, Allegheny, Washington, Greene, Fayette, Somerset, Westmoreland, Warren, Indiana, Butler, Armstrong, Clarion, Venango, Forest, Cambia, Elk and McKean counties).	Chicago.
Puerto Rico	Atlanta.
Rhode Island	Boston.
South Carolina	Atlanta.
South Dakota	Denver.
Tennessee	Atlanta.

State or other locality	Regional office
Texas	Dallas.
Utah	Denver.
Vermont	Boston.
Virginia	Washington, DC.
Washington	San Francisco.
West Virginia	Chicago.
Wisconsin	Chicago.
Wyoming	Denver.
Virgin Islands	Atlanta.
Panama/limited FLRA jurisdiction	Dallas.
All land and water areas east of the continents of North and South America to long. 90 degrees E., except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Chicago.

(5 U.S.C. 7134)

For the Authority:

Jean McKee,

Chairman.

Pamela Talkin,

Member.

Tony Armendariz,

Member.

For the General Counsel:

Joe Swerdzewski,

General Counsel.

[FR Doc. 94–14451 Filed 6–13–94; 8:45 am]

BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

REA Specification for Terminating Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends its regulations on telecommunications standards and specifications for materials, equipment and construction. The revised specification will require that terminating cables comply with Article 800–50 of the 1993 National Electrical Code regarding fire retardancy of these products, include raw material requirements for insulating and jacketing compounds, and update the end product requirements associated with these type cables.

DATES: Effective date: July 14, 1994.

Compliance date: Manufacturers of terminating cables will be allowed until March 14, 1995 to supply borrowers with products already produced or currently in the process of manufacturing under previous Bulletin 345–87.

Incorporation by reference: Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceeding before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule involves standards and specifications, which may increase the direct short term costs to REA borrowers. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this final rule have been submitted to OMB. Comments concerning these requirements should be directed to the office of Information and Regulator Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503. When OMB has approved the information collection and recordkeeping requirements contained in this final rule, REA will publish an amendment to this final rule to add the OMB control number and statement to the regulatory text.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

REA issues publications titled "Bulletins" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for construction of telephone facilities financed with REA loan funds. REA is rescinding Bulletin 345–87, REA Specification for Terminating (TIP) Cable, PE–87, and codifying the revised specification at 7 CFR 1755.870, REA Specification for Terminating Cables.

Terminating cables are used to connect the incoming outside plant cables to the vertical side of the main distributing frame in a telephone central office. Since these cables are installed inside of a building, these cables are required to be listed in accordance with Article 800–50 of the 1993 National Electrical Code (NEC). The current specification does not require these cables to be listed in accordance with Article 800–50 of the 1993 NEC. Therefore, REA is revising the current specification to require these cables to be listed in accordance with Article 800–50 of the 1993 NEC.

The current specification does not include insulation and jacketing raw requirements, because these requirements were previously covered by REA Bulletins 345–21, 345–51, and 345–58 which have since been rescinded. Therefore, revision of the current specification is necessary to incorporate essential jacketing and insulation raw material requirements. By incorporating the raw material requirements which were formerly found in REA Bulletins 345–21, 345–51, and 345–58 into 7 CFR 1755.870, a comprehensive document will be published for the manufacture of terminating cable products.

The current specification contains end product performance requirements that have become outdated for these type cables because of the technological advancements made in the design of terminating cables over the past ten years. Therefore, REA is revising the current specification to update the end product performance requirements associated with these cables to reflect the technological advancements made in the design of these cables.

On November 17, 1993, REA published a proposed rule at 58 FR 220 to rescind REA Bulletin 345–87, REA Specification for Terminating (TIP) Cable, PE–87, and to codify the revised specification at 7 CFR 1755.870, REA Specification for Terminating Cables. Comments on this proposed rule were due by December 17, 1993. Comments and recommendations were received from one company by this due date. The comments, recommendations, and responses are summarized as follows:

The first comment recommended that solid low density polyethylene and expanded polyethylene insulating compounds should also be allowed as an optional primary layer for the dual extruded insulated conductor.

Response: One reason REA 7 CFR 1755.870 requires dual insulated conductors is to provide electrical stability and fire resistance of the insulated conductors. The electrical stability of the insulated conductor is provided by the primary layer which specifies the use of either solid high density polyethylene or solid crystalline propylene/ethylene copolymer insulating compounds. The fire resistance of the insulated conductor is provided by the outer layer or skin which specifies various types of polyvinyl chloride (PVC) insulating compounds. REA chose to limit the primary layer of the dual insulated conductor to either the solid high density polyethylene or the solid crystalline propylene/ethylene copolymer insulating compounds because these insulating compounds have proven histories of providing satisfactory electrical stability of the dual insulated conductor over time. Therefore, REA will not change 7 CFR 1755.870 to allow the use of solid low density polyethylene and expanded polyethylene insulating compounds as primary layers as recommended by the commenter.

The second comment recommended that 7 CFR 1755.870 should allow the use of single insulated conductors using solid PVC insulating compounds in addition to dual insulated conductors.

Response: Another reason REA requires the use of dual insulated conductors for terminating cables is because these terminating cables are presently being spliced to filled outside plant cables at REA borrower construction projects. REA knows that the PVC outer skin of the dual insulated conductor will degrade over time as a result of the PVC's incompatibility with the filling compound used in filled cables. REA also knows that the primary layer of the dual insulated conductor will not degrade because the insulation materials used as the primary layer of the dual insulated conductor are the same insulation materials used as conductor insulations in filled cables which have been proven to be compatible with the filling compound used in filled cables. Since satisfactory signal transmission is dependent upon the integrity of the primary layer of the dual insulated conductor in terminating cables covered by 7 CFR 1755.870, REA must assure that the primary layer will not degrade when these cables are spliced to filled outside plant cables. If REA allowed the use of single insulated conductors using solid PVC insulating compounds, signal transmission on these cables would degrade as a result of the PVC's incompatibility with filling compound when spliced to filled outside plant cables. Based on the above reasons, REA will not allow the use of single insulated conductors using PVC insulating compounds in 7 CFR 1755.870.

The next comment recommended that more restrictive volatile loss requirements should be added to the PVC raw materials used as the outer skin of the dual insulated conductors specified in 7 CFR 1755.870.

Response: The PVC raw materials used as the outer skin of the dual insulated conductor presently specified in 7 CFR 1755.870 have been used in these cables for a number of years with satisfactory results. Since no problems with terminating cables using these PVC raw materials have been encountered, REA will not add the more restrictive volatile loss requirement to the PVC raw materials requirements specified in 7 CFR 1755.870 as recommended by the commenter.

The fourth comment recommended that test method for insulation resistance (IR) specified in the American Society for Testing and Materials (ASTM) D 4566–90 Standard be allowed as an alternative test method for determining the insulation fault rate of the dual insulated conductors.

Response: REA would like to point out that the IR test method for determining the fault rate of the dual insulated conductors specified in 7 CFR 1755.870 is same IR test method as specified in REA Bulletin 345–87. Since manufacturers have been using this IR test method for determining the fault rate of the dual insulated conductors specified in REA Bulletin 345–87 for more than eleven years without any reported problems, REA will not change 7 CFR 1755.870 to allow the alternative IR test method specified in ASTM D 4566–90 as a method for determining the insulation fault of the dual insulated conductors.

The next comment recommended that the dual insulated conductor cold bend test temperature specified in 7 CFR 1755.870 be changed from -40 ± 1 °C to -20 ± 1 °C.

Response: REA would like to point out that the −40 ± 1 °C dual insulated cold bend test temperature specified in 7 CFR 1755.870 is same cold bend test temperature as specified in REA Bulletin 345–87. Since manufacturers have been performing cold bend tests on the dual insulated conductors using the −40 ± 1 °C test temperature specified in REA Bulletin 345–87 for more than eleven years without any reported problems, REA will not change the −40 ± 1 °C cold bend test temperature specified in 7 CFR 1755.870 to the −20 ± 1 °C cold bend test temperature recommended by the commenter.

The sixth comment recommended that the PVC jacket raw material requirements be eliminated from the specification.

Response: REA considers the PVC jacket raw material requirements along with end product PVC jacket requirements to be critical requirements to assure that the PVC jacket will withstand the rigors of installation. Since REA considers PVC jacket raw material requirements as one essential way of assuring that the PVC jacket will withstand the rigors of installation, REA will not eliminate the PVC jacket raw material requirements from 7 CFR 1755.870 as recommended by the respondent.

The seventh comment from the respondent recommended that the thicknesses of the outer jacket should be reduced to coincide with other standards for these type cables.

Response: First, REA knows of no accepted American National Standard for terminating cables. If REA was aware otherwise, REA would reference the jacket thickness requirements of the national standard to assist the industry in providing one cable design that could be used by both REA and non-REA telephone operating companies. Since its REA's knowledge, no accepted national standard exists, REA incorporated the jacket thickness requirements presently specified in REA Bulletin 345–87 into 7 CFR 1755.870 because these thickness requirements have been used for REA terminating cables for over eleven years without any reported field problems. Therefore, REA will not reduce the jacket thickness requirements specified in 7 CFR 1755.870 to the recommendation of the commenter.

The next comment recommended reducing the voice frequency electrical requirements because the respondent feels that the voice frequency electrical requirements specified in 7 CFR 1755.870 are too stringent for voice frequency signal transmission.

Response: The voice frequency electrical requirements specified in 7 CFR 1755.870 were chosen to match voice frequency electrical requirements of outside plant cables to provide satisfactory voice frequency signal transmission. In addition the voice frequency electrical requirements specified in 7 CFR 1755.870 are identical to the voice frequency electrical requirements specified in REA Bulletin 345–87 which has been providing satisfactory voice frequency signal transmission to REA borrowers for the past eleven years. Since REA wanted the voice frequency electrical requirements of terminating cables to match the voice frequency electrical requirements of outside plant cables, REA will not reduce the voice frequency electrical requirements of 7 CFR 1755.870 as recommended by the respondent.

The last comment from the respondent recommended that the test voltages used to test dielectric strength between conductors and dielectric strength between the cable core and shield be changed to coincide with other industry specifications for these type cables.

Response: First, REA knows of no accepted American National Standard for terminating cables. If such a standard did exist, REA would reference the dielectric strength test voltages of the national standard to assist the industry in providing one cable design that could be used by both non-REA and REA telephone operating companies. Since no accepted national standard exists, REA incorporated the dielectric strength test voltages presently specified in REA Bulletin 345–87 into 7 CFR 1755.870 because these dielectric strength test voltages have been used for REA terminating cables for over eleven years without any reported problems. Therefore, REA will not change the dielectric strength test voltages specified in 7 CFR 1755.870 to the commenter's recommendation.

Although REA did not incorporate any of the respondent's recommendations into 7 CFR 1755.870, REA did renumber paragraphs (b)(3)(i) through (b)(12),(e)(2)(i) and (e)(2)(ii) to (b)(3) through (b)(13),(e)(2), and (e)(3), respectively, to make these paragraph numbers more user friendly to interested parties. No changes were made to the technical requirements specified in the above mentioned paragraphs.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, REA amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–87 from the table.

3. Section 1755.870 is added to read as follows:

§ 1755.870 REA specification for terminating cables.

(a) *Scope.* (1) This section establishes the requirements for terminating cables used to connect incoming outside plant cables to the vertical side of the main distributing frame in a telephone central office.

(i) The conductors are solid tinned copper, individually insulated with extruded solid dual insulating compounds.

(ii) The insulated conductors are twisted into pairs which are then stranded or oscillated to form a cylindrical core.

(iii) The cable structure is completed by the application of a core wrap, a shield, and a polyvinyl chloride jacket.

(2) The number of pairs and gauge size of conductors which are used within the REA program are provided in the following table:

American Wire Gauge (AWG)	D22	24
Number of Pairs	12	12
	50	50
	100	100
	200	200
	300	300
	400	400
	600	600
	800	800

NOTE: Cables larger in pair sizes from those shown in this table shall meet all the requirements of this section.

(3) All cables sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole

authority on what constitutes a design change.

(4) Materials, manufacturing techniques, or cable designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of modified materials, manufacturing techniques, or cable designs shall be provided to substantiate product utility and long term stability and endurance.

(5) The American National Standard Institute/Electronic Industries Association (ANSI/EIA) 359–A–84, EIA Standard Colors for Color Identification and Coding, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/EIA 359–A–84 are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(6) American Society for Testing and Materials Specifications (ASTM) B 33–91, Standard Specification for Tinned Soft or Annealed Copper Wire for Electrical Purposes; ASTM B 736–92a Standard Specification for Aluminum, Aluminum Alloy and Aluminum-Clad Steel Cable Shielding Stock; ASTM D 1248–84 (1989), Standard Specification for Polyethylene Plastics Molding and Extrusion Materials; ASTM D 1535–89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 2287–81 (Reapproved 1988), Standard Specification for Nonrigid Vinyl Chloride Polymer and Copolymer Molding and Extrusion Compounds; ASTM D 2436–85, Standard Specification for Forced-Convection Laboratory Ovens for Electrical Insulation; ASTM D 2633–82 (Reapproved 1989), Standard Methods of Testing Thermoplastic Insulations and Jackets for Wire and Cable; ASTM D 4101–82 (1988), Standard Specification for Propylene Plastic Injection and Extrusion Materials; ASTM D 4565–90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; and ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(7) American National Standards Institute/National Fire Protection Association (ANSI/NFPA), NFPA 70–1993 National Electrical Code referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the ANSI/NFPA standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from NFPA, Batterymarch Park, Quincy, Massachusetts 02269, telephone number 1 (800) 344–3555.

(8) Underwriters Laboratories Inc. (UL) 1666, Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts, dated January 22, 1991, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the UL standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from UL Inc., 333 Pfingsten Road, Northbrook, Illinois 60062–2096, telephone number (708) 272–8800.

(b) *Conductors and conductor insulation.* (1) Each conductor shall be a solid round wire of commercially pure annealed tin coated copper. Conductors shall meet the requirements of the American Society for Testing and Materials (ASTM) B 33–91 except that requirements for *Dimensions and Permissible Variations* are waived.

(2) Joints made in conductors during the manufacturing process may be brazed, using a silver alloy solder and nonacid flux, or they may be welded using either an electrical or cold welding technique. In joints made in uninsulated conductors, the two conductor ends shall be butted. Splices made in insulated conductors need not be butted but may be joined in a manner acceptable to REA.

(3) The tensile strength of any section of a conductor, containing a factory joint, shall not be less than 85 percent of the tensile strength of an adjacent section of the solid conductor of equal length without a joint.

(4) Engineering Information: The sizes of wire used and their nominal diameters shall be as shown in the following table:

AWG	Nominal diameter	
	Millimeters	(Inches)
22	0.643	(0.0253)
24	0.511	(0.0201)

(5) Each conductor shall be insulated with a primary layer of natural or white solid, insulating grade, high density polyethylene or crystalline propylene/ethylene copolymer and an outer skin of colored, solid, insulating grade, polyvinyl chloride (PVC) using one of the insulating materials listed in paragraphs (b)(5)(i) through (iii) of this section.

(i) The polyethylene raw material selected to meet the requirements of this section shall be Type III, Class A, Category 4 or 5, Grade E9, in accordance with ASTM D 1248–84 (1989).

(ii) The crystalline propylene/ethylene raw material selected to meet the requirements of this section shall be Class PP 200B 40003 E11 in accordance with ASTM D 4101–82 (1988).

(iii) The PVC raw material selected to meet the requirements of this section shall be either Type PVC–64751E3XO, Type PVC–76751E3XO, or Type PVC–77751E3XO in accordance with ASTM D 2287–81 (1988).

(iv) Raw materials intended as conductor insulation furnished to these requirements shall be free from dirt, metallic particles, and other foreign matter.

(v) All insulating raw materials shall be accepted by REA prior to their use.

(6) All conductors in any single length of cable shall be insulated with the same type of material.

(7) A permissible overall performance level of faults in conductor insulation when using the test procedures in

paragraph (b)(8) of this section shall average not greater than one fault per 12,000 conductor meters (40,000 conductor feet) for each gauge of conductor.

(8) The test used to determine compliance with paragraph (b)(7) of this section shall be conducted as follows:

(i) Samples tested shall be taken from finished cables selected at random from standard production cable. The samples tested shall contain a minimum of 300 conductor meters (1,000 conductor feet) for cables sizes less than 50 pairs and 1,500 conductor meters (5,000 conductor feet) for cables sizes greater than or equal to 50 pairs. No further sample need be taken from the same cable production run within 6,000 cable meters (20,000 cable feet) of the original test sample from that run.

(ii) The cable sample shall have its jacket, shield, and core wrap removed and its core shall be immersed in tap water for a minimum period of 6 hours. In lieu of removing the jacket, shield, and core wrap from the core, the entire cable may be tested. In this case, the core shall be completely filled with tap water, under pressure; then the cable assembly shall be immersed for a minimum period of 6 hours. With the cable core still fully immersed, except for end connections, the insulation resistance (IR) of all conductors to water shall be measured using a direct current (dc) voltage of 100 volts to 550 volts.

(iii) An IR value of less than 500 megohms for any individual insulated conductor tested at or corrected to a temperature of 23 °C is considered a failure. If the cable sample is more than 7.5 meters (25 feet) long, all failing conductors shall be retested and reported in 7.5 meter (25 foot) segments.

(iv) The pair count, gauge, footage, and number of insulation faults shall be recorded. This information shall be retained on a 6 month running basis for review by REA when requested.

(v) A fault rate, in a continuous length in any one reel, in excess of one fault per 3,000 conductor meters (10,000 conductor feet) due to manufacturing defects is cause for rejection. A minimum of 6,000 conductor meters (20,000 conductor feet) is required to develop a noncompliance in a reel.

(9) Repairs to the conductor insulation during manufacturing are permissible. The method of repair shall be accepted by REA prior to its use. The repaired insulation shall be capable of meeting the relevant electrical requirements of this section.

(10) All repaired sections of insulation shall be retested in the same manner as originally tested for compliance with paragraph (b)(7) of this section.

(11) The colored composite insulating material removed from or tested on the conductor, from a finished cable, shall be capable of meeting the following performance requirements:

Property	Composite insulation
Tensile Strength, Minimum Megapascals (MPa) (Pounds per square inch (psi))	16.5 (2400)
Ultimate Elongation Percent, Minimum	125
Cold Bend Failures, Maximum	0/10
Shrinkback, Maximum Millimeter (mm) (Inches (in.))	9.5 (3/8)
Adhesion, Maximum Newtons (N) (Pound-force (lbf))	13.3 (3)
Compression Minimum, N (lbf)	1780 (400)

(12) *Testing procedures.* The procedures for testing the composite insulation samples for compliance with paragraph (b)(11) of this section shall be as follows:

(i) *Tensile strength and ultimate elongation.* Samples of the insulation material, removed from the conductor, shall be tested in accordance with ASTM D 2633–82(1989), except that the speed of jaw separation shall be 50 millimeters/minute (50 mm/min) (2 inches/minute (2 in./min)).

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate shall be retested at the 50 mm/min (2 in./min) rate to determine specification compliance.

(ii) *Cold bend.* Samples of the insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a at a temperature of −40±1 °C with a mandrel diameter of 6 mm (0.25 in.). There shall be no cracks visible to normal or corrected-to-normal vision.

(iii) *Shrinkback.* Samples of insulation shall be tested for four hours at a temperature of 115±1 °C in accordance with ASTM D 4565–90a.

(iv) *Adhesion.* Samples of insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a with a crosshead speed of 50 mm/min (2 in./min).

(v) *Compression.* Samples of the insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a with a crosshead speed of 5 mm/min (0.2 in./min).

(13) Other methods of testing may be used if acceptable to REA.

(c) *Identification of pairs and twisting of pairs.* (1) The PVC skin shall be colored to identify:

(i) The tip and ring conductor of each pair; and

(ii) Each pair in the completed cable.

(2) The colors used to provide identification of the tip and ring conductor of each pair shall be as shown in the following table:

Pair No.	Color	
	Tip	Ring
1	White	Blue
2	White	Orange
3	White	Green
4	White	Brown
5	White	Slate
6	Red	Blue
7	Red	Orange
8	Red	Green
9	Red	Brown
10	Red	Slate
11	Black	Blue
12	Black	Orange
13	Black	Green
14	Black	Brown
15	Black	Slate
16	Yellow	Blue
17	Yellow	Orange
18	Yellow	Green
19	Yellow	Brown
20	Yellow	Slate
21	Violet	Blue
22	Violet	Orange
23	Violet	Green
24	Violet	Brown
25	Violet	Slate

(3) *Standards of color.* The colors of the insulated conductors supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and shall comply with the "Table of Wire and Cable Limit Chips" as defined in ANSI/EIA–359–A–84. (Visual color standards meeting these requirements may be obtained directly from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland 21218).

(4) Positive identification of the tip and ring conductors of each pair by marking each conductor of a pair with the color of its mate is permissible. The method of marking shall be accepted by REA prior to its use.

(5) Other methods of providing positive identification of the tip and ring conductors of each pair may be employed if accepted by REA prior to its use.

(6) The insulated conductors shall be twisted into pairs.

(7) In order to provide sufficiently high crosstalk isolation, the pair twists shall be designed to enable the cable to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (h)(2), (h)(3), and (h)(4) of this section.

(8) The average length of pair twists in any pair in the finished cable, when measured on any 3 meter (m) (10 foot

(ft)) length, shall not exceed 152 mm (6 in.).

(d) *Forming of the cable core.* (1) Twisted pairs shall be assembled in such a way as to form a substantially cylindrical group.

(2) When desired for lay-up reasons, the basic group may be divided into two or more subgroups called units.

(3) Each group, or unit in a particular group, shall be enclosed in bindings of the colors indicated for its particular pair count. The pair count, indicated by the color of insulation, shall be consecutive as indicated in paragraph (d)(5) of this section through units in a group.

(4) Threads or tapes used as binders shall be nonhygroscopic and nonwicking. The threads shall consists of a suitable number of ends of each color arranged as color bands. When tapes are used as binders, they shall be colored. Binders shall be applied with a lay of not more than 100 mm (4 in.). The colored binders shall be readily recognizable as the basic intended color and shall be distinguishable from all other colors.

(5) The colors of the bindings and their significance with respect to pair count shall be as shown in the following table:

Group No.	Color of bindings	Group pair count
1	White-Blue	1–25
2	White-Orange	26–50
3	White-Green	51–75
4	White-Brown	76–100
5	White-Slate	101–125
6	Red-Blue	126–150
7	Red-Orange	151–175
8	Red-Green	176–200
9	Red-Brown	201–225
10	Red-Slate	226–250
11	Black-Blue	251–275
12	Black-Orange	276–300
13	Black-Green	301–325
14	Black-Brown	326–350
15	Black-Slate	351–375
16	Yellow-Blue	376–400
17	Yellow-Orange	401–425
18	Yellow-Green	426–450
19	Yellow-Brown	451–475
20	Yellow-Slate	476–500
21	Violet-Blue	501–525
22	Violet-Orange	526–550
23	Violet-Green	551–575
24	Violet-Brown	576–600

(6) The use of the white unit binder in cables of 100 pair or less is optional.

(7) When desired for manufacturing reasons, two or more 25 pair groups may be bound together with nonhygroscopic and nonwicking threads or tapes into super-units. The group binders and the super-unit binders shall be colored such that the combination of the two binders shall positively identify each 25 pair group from every other 25 pair group in the cable.

(8) Super-unit binders shall be of the colors shown in the following table:

SUPER-UNIT BINDER COLORS

Pair No.	Binder color
1–600	White
601–1200	Red

(e) *Core wrap.* (1) The core shall be completely covered with a layer of nonhygroscopic and nonwicking dielectric material. The core wrap shall be applied with an overlap.

(2) The core wrap shall provide a sufficient heat barrier to prevent visible evidence of conductor insulation deformation or adhesion between conductors, caused by adverse heat transfer during the jacketing operation.

(3) Engineering Information: If required for manufacturing reasons, white or uncolored binders of nonhygroscopic and nonwicking material may be applied over the core and/or core wrap.

(f) *Shield.* (1) An aluminum shield, plastic coated on one side, shall be applied longitudinally over the core wrap.

(2) The shield may be applied over the core wrap with or without corrugations (smooth) and shall be bonded to the outer jacket.

(3) The shield overlap shall be a minimum of 3 mm (0.125 in.) for cables with core diameters of 15 mm (0.625 in.) or less and a minimum of 6 mm (0.25 in.) for cables with core diameters greater than 15 mm (0.625 in.). The core diameter is defined as the diameter under the core wrap and binding.

(4) General requirements for application of the shielding material shall be as follows:

(i) Successive lengths of shielding tapes may be joined during the manufacturing process by means of cold weld, electric weld, soldering with a nonacid flux, or other acceptable means;

(ii) The metal shield with the plastic coating shall have the coating removed prior to joining the metal ends together. After joining, the plastic coating shall be restored without voids using good manufacturing techniques;

(iii) The shields of each length of cable shall be tested for continuity. A one meter (3 ft) section of shield containing a factory joint shall exhibit not more than 110 percent of the resistance of a shield of equal length without a joint;

(iv) The breaking strength of any section of a shield tape containing a factory joint shall not be less than 80 percent of the breaking strength of an adjacent section of the shield of equal length without a joint;

(v) The reduction in thickness of the shielding material due to the corrugating or application process shall be kept to a minimum and shall not exceed 10 percent at any spot; and

(vi) The shielding material shall be applied in such a manner as to enable the cable to pass the bend test as specified in paragraph (i)(1) of this section.

(5) The dimensions of the uncoated aluminum tape shall be 0.2030±0.0254 mm (0.0080±0.0010 in.).

(6) The aluminum tape shall conform to either Alloy AA–1100–0, AA–1145–0, or AA–1235–0 as covered in the latest edition of Aluminum Standards and Data, issued by the Aluminum Association, except that requirements for tensile strength are waived.

(7) The single-sided plastic coated aluminum shield shall conform to the requirements of ASTM B 736–92a, Type I Coating, Class 1 or 2, or Type II Coating, Class 1. The minimum thickness of the Type I Coating shall be 0.038 mm (0.0015 in.). The minimum thickness of the Type II Coating shall be 0.008 mm (0.0003 in.).

(8) The plastic coated aluminum shield shall be tested for resistance to water migration by immersing a one meter (3 ft) length of tape under a one meter (3 ft) head of water containing a soluble dye plus 0.25 percent (%) wetting agent.

(i) After a minimum of 5 minutes, no dye shall appear between the interface of the shield tape and the plastic coating.

(ii) The actual test method shall be acceptable to REA.

(9) The bond between the plastic coated shield and the jacket shall conform to the following requirements:

(i) Prepare test strips approximately 200 mm (8 in.) in length. Slit the jacket and shield longitudinally to produce 4 strips evenly spaced and centered in 4 quadrants on the jacket circumference. One of the strips shall be centered over the overlapped edge of the shielding tape. The strips shall be 13 mm (0.5 in.) wide. For cable diameters less than 19 mm (0.75 in.) make two strips evenly spaced.

(ii) Separate the shield and jacket for a sufficient distance to allow the shield and jacket to be fitted in the upper and lower jaws of a tensile machine. Record the maximum force required to separate the shield and jacket to the nearest newton (pound-force). Repeat this action for each test strip.

(iii) The force required to separate the jacket from the shield shall not be less

than 9 N (2 lbf) for any individual strip when tested in accordance with paragraph (f)(9)(ii) of this section. The average force for all strips of any cable shall not be less than 18 N (4 lbf).

(g) *Cable jacket and extraneous material.* (1) The jacket shall provide the cable with a tough, flexible, protective covering which can withstand stresses reasonably expected in normal installation and service.

(2) The jacket shall be free from holes, splits, blisters, or other imperfections and shall be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the cable jacket shall be one of the following four types:

(i) Type PVC–55554EOXO in accordance with ASTM D 2287–81(1988);

(ii) Type PVC–65554EOXO in accordance with ASTM D 2287–81(1988);

(iii) Type PVC–55556EOXO in accordance with ASTM D 2287–81(1988); or

(iv) Type PVC–66554EOXO in accordance with ASTM D 2287–81(1988).

(4) The jacketing material removed from or tested on the cable shall be capable of meeting the following performance requirements:

Property	Jacket performance
Tensile Strength-Unaged Minimum, MPa (psi)	13.8 (2000)
Ultimate Elongation-Unaged Minimum, Percent (%)	200
Tensile Strength-Aged Minimum, % of original value	80
Ultimate Elongation-Aged Minimum, % of original value	50
Impact Failures, Maximum	2/10

(5) *Testing procedures.* The procedures for testing the jacket samples for compliance with paragraph (g)(4) of this section shall be as follows:

(i) *Tensile strength and ultimate elongation-unaged.* The test shall be performed in accordance with ASTM D 2633–82(1989), using a jaw separation speed of 50 mm/min (2 in./min).

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate shall be retested at the 50 mm/min (2 in./min) rate to determine specification compliance.

(ii) *Tensile strength and ultimate elongation-aged.* The test shall be performed in accordance with paragraph (g)(5)(i) of this section after being aged for 7 days at a temperature of 100±1 °C in a circulating air oven conforming to ASTM D 2436–85.

(iii) *Impact.* The test shall be performed in accordance with ASTM D 4565–90a using an impact force of 4 newton-meter (3 pound force-foot) at a temperature of −10±1 °C. The cylinder shall strike the sample at the shield overlap. A crack or split in the jacket constitutes failure.

(6) *Jacket thickness.* The nominal jacket thickness shall be as specified in the following table. The test method used shall be either the End Sample Method (paragraph (g)(6)(i) of this section) or the Continuous Uniformity Thickness Gauge Method (paragraph (g)(6)(ii) of this section):

No. of pairs	Nominal jacket thickness mm (in.)
25 or less	1.4 (0.055)
50	1.5 (0.060)
100	1.7 (0.065)
200	1.9 (0.075)
300	2.2 (0.085)
400	2.4 (0.095)
600	2.9 (0.115)
800 and over	3.3 (0.130)

(i) *End sample method.* The jacket shall be capable of meeting the following requirements:

Minimum Average Thickness—90% of nominal thickness

Minimum Thickness—70% of nominal thickness

(ii) *Continuous uniformity thickness gauge method.* (A) The jacket shall be capable of meeting the following requirements:

Minimum Average Thickness—90% of nominal thickness

Minimum (Min.) Thickness—70 % of nominal thickness

Maximum (Max.) Eccentricity—55%

Eccentricity=Max. Thickness—Min. Thickness (Average Thickness)×100

(B) *Maximum and minimum thickness values.* The maximum and minimum thickness values shall be based on the average of each axial section.

(7) The color of the jacket shall be either black or dark grey in conformance with the Munsell Color System specified in ASTM D 1535–89.

(8) There shall be no water or other contaminants in the finished cable which would have a detrimental effect on its performance or its useful life.

(h) *Electrical requirements*—(1) *Mutual capacitance and conductance.* (i) The average mutual capacitance (corrected for length) of all pairs in any reel shall not exceed the following when tested in accordance with ASTM D 4566–90 at a frequency of 1.0± 0.1 kilohertz (kHz) and a temperature of 23±3°C:

Number of cable pairs	Mutual capacitance	
	Nanofarad/kilometer	(Nanofarad/mile)
12	52±4	(83±7)
Over 12	52±2	(83±4)

(ii) The root mean square (rms) deviation of the mutual capacitance of all pairs from the average mutual capacitance of that reel shall not exceed 3.0 % when calculated in accordance with ASTM D 4566–90.

(iii) The mutual conductance (corrected for length and gauge) of any pair shall not exceed 3.7 micromhos/kilometer (micromhos/km) (6.0 micromhos/mile) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kHz and a temperature of 23±3°C.

(2) *Pair-to-pair capacitance unbalance.* The capacitance unbalance as measured on the completed cable shall not exceed 45.3 picofarad/kilometer (pF/km) (25 picofarad/1000 ft (pF/1000 ft)) rms when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kHz and a temperature of 23±3°C.

(3) *Pair-to-ground capacitance unbalance.* (i) The average capacitance unbalance as measured on the completed cable shall not exceed 574 pF/km (175 pF/1000 ft) when tested in accordance with ASTM D 4566–90 at a frequency of 1 0.1 kHz and a temperature of 23±3°C.

(ii) When measuring pair-to-ground capacitance unbalance all pairs except the pair under test are grounded to the shield except when measuring cable containing super-units in which case all other pairs in the same super-unit shall be grounded to the shield.

(iii) Pair-to-ground capacitance unbalance may vary directly with the length of the cable.

(4) *Crosstalk loss.* (i) The rms output-to-output far-end crosstalk loss (FEXT) measured on the completed cable in accordance with ASTM D 4566–90 at a test frequency of 150 kHz shall not be less than 68 decibel/kilometer (dB/km) (73 decibel/1000 ft (dB/1000 ft)). The rms calculation shall be based on the combined total of all adjacent and alternate pair combinations within the same layer and center to first layer pair combinations.

(ii) The FEXT crosstalk loss between any pair combination of a cable shall not be less than 58 dB/km (63 dB/1000 ft) at a frequency of 150 kHz. If the loss K_o at a frequency F_o for length L_o is known, then K_x can be determined for any other frequency F_x or length L_x by:

$$\text{FEXT loss}\,(K_x) = K_o - 20\log 10\frac{F_x}{F_o} - 10\log 10\frac{L_x}{L_o}$$

(iii) The near-end crosstalk loss (NEXT) as measured within and between units of a completed cable in accordance with ASTM D 4566–90 at a frequency of 772 kHz shall not be less than the following mean minus sigma (M–S) crosstalk requirement for any unit within the cable:

Unit size	M–S decibel (dB)
Within Unit:	
12 and 13 pairs	56
18 and 25 pairs	60
Between Unit:	
Adjacent 13 pairs	65
Adjacent 25 pairs	66
Nonadjacent (all)	81

Where M–S is the Mean near-end coupling loss based on the combined total of all pair combinations, less one Standard Deviation, Sigma, of the mean value.

(5) *Insulation resistance.* Each insulated conductor in each length of completed cable, when measured with all other insulated conductors and the shield grounded, shall have an insulation resistance of not less than 152 megohm-kilometer (500 megohm-mile) at 20±1°C. The measurement shall be made in accordance with the procedures of ASTM D 4566–90.

(6) *High voltage test.* (i) In each length of completed cable, the dielectric strength of the insulation between conductors shall be tested in accordance with ASTM D 4566–90 and shall withstand, for 3 seconds, a direct current (dc) potential whose value is not less than:

(A) 3.6 kilovolts for 22-gauge conductors; or

(B) 3.0 kilovolts for 24-gauge conductors.

(ii) In each length of completed cable, the dielectric strength between the shield and all conductors in the core shall be tested in accordance with ASTM D 4566–90 and shall withstand, for 3 seconds, a dc potential whose value is not less than 10 kilovolts.

(7) *Conductor resistance.* The dc resistance of any conductor shall be measured in the completed cable in accordance with ASTM D 4566–90 and shall not exceed the following values when measured at or corrected to a temperature of 20±1°C:

AWG	Maximum resistance	
	ohms/kilometer	(ohms/1000 ft)
22	60.7	(18.5)
24	95.1	(29.0)

(8) *Resistance unbalance.* (i) The difference in dc resistance between the two conductors of a pair in the completed cable shall not exceed the values listed in this paragraph when measured in accordance with the procedures of ASTM D 4566–90:

AWG	Resistance unbalance	Maximum for any reel
	Average percent	Individual pair percent
22	1.5	4.0
24	1.5	5.0

(ii) The resistance unbalance between tip and ring conductors shall be random with respect to the direction of unbalance. That is, the resistance of the tip conductors shall not be consistently higher with respect to the ring conductors and vice versa.

(9) *Electrical variations.* (i) Pairs in each length of cable having either a ground, cross, short, or open circuit condition shall not be permitted.

(ii) The maximum number of pairs in a cable which may vary as specified in paragraph (h)(9)(iii) of this section from the electrical parameters given in this section are listed in this paragraph. These pairs may be excluded from the arithmetic calculation:

Nominal pair count	Maximum No. of pairs with allowable electrical variation
12–100	1
101–300	2
301–400	3
401–600	4
601 and above	6

(iii) *Parameter variations*—(A) *Capacitance unbalance-to-ground.* If the cable fails either the maximum individual pair or average capacitance unbalance-to-ground requirement and all individual pairs are 3280 pF/km (1000 pF/1000 ft) or less the number of pairs specified in paragraph (h)(9)(ii) of this section may be eliminated from the average and maximum individual calculations.

(B) *Resistance unbalance.* Individual pair of not more than 7 percent for all gauges.

(C) *Far end crosstalk.* Individual pair combination of not less than 52 dB/km (57 dB/1000 ft).

Note: REA recognizes that in large pair count cables (600 pair and above) a cross, short, or open circuit condition occasionally may develop in a pair which does not affect the performance of the other cable pairs. In these circumstances rejection of the entire cable may be economically unsound or repairs may be impractical. In such circumstances the manufacturer may desire to negotiate with the customer for acceptance of the cable. No more than 0.5 percent of the pairs may be involved.

(i) *Mechanical requirements*—(1) *Cable cold bend test.* The completed cable shall be capable of meeting the requirements of ASTM D 4565–90a after conditioning at −20 ± 2 °C except the mandrel diameters shall be as specified below:

Cable outside diameter	Mandrel diameter
<40 mm (1.5 in.)	15x
≥40 mm (1.5 in.)	20x

(2) *Cable flame test.* The completed cable shall be capable of meeting a maximum flame height of 3.7 m (12.0 ft) when tested in accordance with Underwriters Laboratories (UL) 1666 dated January 22, 1991.

(3) *Cable listing.* All cables manufactured to the specification of this section at a minimum shall be listed as Communication Riser Cable (Type CMR) in accordance with Sections 800–50 and 800–51(b) of the 1993 National Electrical Code.

(j) *Sheath slitting cord* (optional). (1) Sheath slitting cords may be used in the cable structure at the option of the manufacturer.

(2) When a sheath slitting cord is used it shall be nonhygroscopic and nonwicking, continuous throughout a length of cable, and of sufficient strength to open the sheath without breaking the cord.

(3) Sheath slitting cords shall be capable of consistently slitting the jacket and/or shield for a continuous length of 0.6 m (2 ft) when tested in accordance with the procedure specified in Appendix B of this section.

(k) *Identification marker and length marker.* (1) Each length of cable shall be permanently identified as to manufacturer and year of manufacture

(2) The number of conductor pairs and their gauge size shall be marked on the jacket.

(3) The marking shall be printed on the jacket at regular intervals of not more than 1.5 m (5 ft).

(4) An alternative method of marking may be used if accepted by REA prior to its use.

(5) The completed cable shall have sequentially numbered length markers in FEET OR METERS at regular intervals of not more than 1.5 m (5 ft) along the outside of the jacket.

(6) The method of length marking shall be such that for any single length of cable, continuous sequential numbering shall be employed.

(7) The numbers shall be dimensioned and spaced to produce good legibility and shall be approximately 3 mm (0.125 in.) in height. An occasional illegible marking is permissible if there is a legible marking located not more than 1.5 m (5 ft) from it.

(8) The method of marking shall be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking shall be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker shall be considered in acceptance of the method.

(9) The accuracy of the length marking shall be such that the actual length of any cable section is never less than the length indicated by the marking and never more than one percent greater than the length indicated by the marking.

(10) The color of the initial marking for a black colored jacket shall be either white or silver. The color of the initial marking for a dark grey colored jacket shall be either red or black. If the initial marking of the black colored jacket fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the cable and re-mark with yellow. If the initial marking of the dark grey colored jacket fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the red or black color or leave the defective marking on the cable and re-mark with yellow. No further re-marking is permitted. Any re-marking shall be on a different portion of the cable circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 5,000.

(11) Any reel of cable which contains more than one set of sequential markings shall be labeled to indicate the color and sequence of marking to be used. The labeling shall be applied to the reel and also to the cable.

(l) *Preconnectorized cable* (optional). (1) At the option of the manufacturer and upon request by the purchaser, cables 100 pairs and larger may be factory terminated in 25 pair splicing modules.

(2) The splicing modules shall meet the requirements of REA Bulletin 345–54, PE–52, REA Specification for Telephone Cable Splicing Connectors (Incorporated by Reference at § 1755.97), and be accepted by REA prior to their use.

(m) *Acceptance testing and extent of testing.* (1) The tests described in Appendix A of this section are intended for acceptance of cable designs and major modifications of accepted designs. REA decides what constitutes a major modification. These tests are intended to show the inherent capability of the manufacturer to produce cable products having long life and stability.

(2) For initial acceptance, the manufacturer shall submit:

(i) An original signature certification that the product fully complies with each section of the specification;

(ii) Qualification Test Data, per Appendix A of this section;

(iii) To periodic plant inspections;

(iv) A certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*);

(v) Written user testimonials concerning performance of the product; and

(vi) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer shall submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*) for acceptance by June 30 every three years. The required data and certification shall have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(5) *Tests on 100 percent of completed cable.* (i) The shield of each length of cable shall be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Dielectric strength between all conductors and the shield shall be tested to determine freedom from grounds in accordance with paragraph (h)(6)(ii) of this section.

(iii) Each conductor in the completed cable shall be tested for continuity using the procedures of ASTM D 4566–90.

(iv) Dielectric strength between conductors shall be tested to ensure freedom from shorts and crosses in accordance with paragraph (h)(6)(i) of this section.

(v) Each conductor in the completed preconnectorized cable shall be tested for continuity.

(vi) Each length of completed preconnectorized cable shall be tested for split pairs.

(vii) The average mutual capacitance shall be measured on all cables. If the average mutual capacitance for the first 100 pairs tested from randomly selected groups is between 50 and 53 nF/km (80 to 85 nF/mile), the remainder of the pairs need not to be tested on the 100 percent basis. (See paragraph (h)(1) of this section).

(6) *Capability tests.* Tests on a quality assurance basis shall be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Performance requirements for conductor insulation and jacket material;

(ii) Bonding properties of coated or laminated shielding materials;

(iii) Sequential marking and lettering;

(iv) Capacitance unbalance and crosstalk;

(v) Insulation resistance;

(vi) Conductor resistance and resistance unbalance;

(vii) Cable cold bend and cable flame tests; and

(viii) Mutual conductance.

(n) *Summary of records of electrical and physical tests.* (1) Each manufacturer shall maintain a suitable summary of records for a period of at least 3 years for all electrical and physical tests required on completed cable by this section as set forth in paragraphs (m)(5) and (m)(6) of this section. The test data for a particular reel shall be in a form that it may be

readily available to the purchaser or to REA upon request.

(2) Measurements and computed values shall be rounded off to the number of places of figures specified for the requirement according to ASTM E 29–90.

(o) *Manufacturing irregularities.* (1) Repairs to the shield are not permitted in cable supplied to the end user under this section.

(2) No repairs or defects in the jacket are allowed.

(p) *Preparation for shipment.* (1) The cable shall be shipped on reels unless otherwise specified or agreed to by the purchaser. The diameter of the drum shall be large enough to prevent damage to the cable from reeling or unreeling. The reels shall be substantial and so constructed as to prevent damage to the cable during shipment and handling.

(2) A waterproof corrugated board or other means of protection acceptable to REA shall be applied to the reel and shall be suitably secured in place to prevent damage to the cable during storage and shipment.

(3) The outer end of the cable shall be securely fastened to the reel head so as to prevent the cable from becoming loose in transit. The inner end of the cable shall be securely fastened in such a way as to make it readily available if required for electrical testing. Spikes, staples, or other fastening devices which penetrate the cable jacket shall not be used. The method of fastening the cable ends shall be accepted by REA prior to it being used.

(4) Each length of cable shall be wound on a separate reel unless otherwise specified or agreed to by the purchaser.

(5) The arbor hole shall admit a spindle 63 mm (2.5 in.) in diameter without binding. Steel arbor hole liners may be used but shall be acceptable to REA prior to their use.

(6) Each reel shall be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the cable on the reel.

(7) Each reel shall be stenciled or labeled on either one or both sides with the name of the manufacturer, year of manufacture, actual shipping length, an inner and outer end sequential length marking, description of the cable, reel number and the REA cable designation:

Cable Designation

CT
Cable Construction
Pair Count
Conductor Gauge
A = Coated Aluminum Shield
P = Preconnectorized Cable
Example: CTAP 100–22

Terminating Cable, Coated Aluminum Shield, Preconnectorized, 100 pairs, 22 AWG.

(8) When preconnectorized cable is shipped, the splicing modules shall be protected to prevent damage during shipment and handling. The protection method shall be acceptable to REA prior to its use.

Appendix A to 7 CFR 1755.870—Qualification Test Methods

(I) The test procedures described in this appendix are for qualification of initial designs and major modifications of accepted designs. Included in paragraph (V) of this appendix are suggested formats that may be used in submitting test results to REA.

(II) *Sample Selection and Preparation.* (1) All testing shall be performed on lengths removed sequentially from the same 25 pair, 22 gauge jacketed cable. This cable shall not have been exposed to temperatures in excess of 38 °C since its initial cool down after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used.

(a) Length A shall be 12 ± 0.2 meters (40 ± 0.5 feet) long. Prepare the test sample by removing the jacket, shield, and core wrap for a sufficient distance on both ends to allow the insulated conductors to be flared out. Remove sufficient conductor insulation so that appropriate electrical test connections can be made at both ends. Coil the sample with a diameter of 15 to 20 times its sheath diameter. Two lengths are required.

(b) Length B shall be 300 millimeters (1 foot) long. Three lengths are required.

(c) Length C shall be 3 meters (10 feet) long and shall be maintained at 23 ± 3 °C for the duration of the test. Two lengths are required.

(2) *Data Reference Temperature.* Unless otherwise specified, all measurements shall be made at 23 ± 3 °C.

(III) *Environmental Tests*—(1) *Heat Aging Test*—(a) *Test Samples.* Place one sample each of lengths A and B in an oven or environmental chamber. The ends of sample A shall exit from the chamber or oven for electrical tests. Securely seal the oven exit holes.

(b) *Sequence of Tests.* Sample B referenced in paragraph (III)(1)(a) of this appendix shall be subjected to the insulation compression test outlined in paragraph (III)(2) of this appendix.

(c) *Initial Measurements.* (i) For sample A, measure the open circuit capacitance and conductance for each odd pair at 1, 150, and 772 kilohertz after conditioning the sample at the data reference temperature for 24 hours. Calculate the average and standard deviation for the data of the 13 pairs on a per kilometer (per mile) basis.

(ii) Record on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(d) *Heat Conditioning.* (i) Immediately after completing the initial measurements, condition the sample for 14 days at a temperature of 65 ± 2 °C.

(ii) At the end of this period. Measure and calculate the parameters given in paragraph (III)(1)(c) of this appendix. Record on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(e) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in paragraph (III)(1)(c) of this appendix.

(ii) The stability of the electrical parameters after completion of this test shall be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance shall be within 10 percent of its original value;

(B) The change in average mutual capacitance shall be less than 10 percent over the frequency range of 1 to 150 kilohertz; and

(C) *Conductance.* The average mutual conductance shall not exceed 3.7 micromhos/kilometer (6 micromhos/mile) at a frequency of 1 kilohertz.

(2) *Insulation Compression Test*—(a) *Test Sample B.* Remove jacket, shield, and core wrap being careful not to damage the conductor insulation. Remove one pair from the core and carefully separate and straighten the insulated conductors. Retwist the two insulated conductors together under sufficient tension to form 10 evenly spaced 360 degree twists in a length of 100 millimeters (4 inches).

(b) *Sample Testing.* Center the mid 50 millimeters (2 inches) of the twisted pair between two smooth rigid parallel metal plates measuring 50 millimeters (2 inches) in length or diameter. Apply a 1.5 volt direct current potential between the conductors, using a light or buzzer to indicate electrical contact between the conductors. Apply a constant load of 67 newtons (15 pound-force) on the sample for one minute and monitor for evidence of contact between the conductors. Record results on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(3) *Temperature Cycling.* (a) Repeat paragraphs (III)(1)(a) through (III)(1)(c)(ii) of this appendix for a separate set of samples A and B which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test samples to 10 cycles of temperature between −40 °C and +60 °C. The test samples shall be held at each temperature extreme for a minimum of 1.5 hours during each cycle of temperature. The air within the temperature cycling chamber shall be circulated throughout the duration of the cycling.

(c) Repeat paragraphs (III)(1)(d)(ii) through (III)(2)(b) of this appendix.

(IV) *Control Sample*—(1) *Test Samples.* One length of sample B shall have been maintained at 23 ± 3 °C for at least 48 hours before the testing.

(2) Repeat paragraphs (III)(2) through (III)(2)(b) of this appendix.

(3) *Surge Test.* (a) One length of sample C shall be used to measure the breakdown between conductors while the other length of C shall be used to measure core to shield breakdown.

(b) The samples shall be capable of withstanding, without damage, a single surge voltage of 20 kilovolts peak between conductors, and 35 kilovolts peak between

conductors and the shield as hereinafter described. The surge voltage shall be developed from a capacitor discharge through a forming resistor connected in parallel with the dielectric of the test sample. The surge generator constants shall be such as to produce a surge of 1.5 × 40 microseconds wave shape.

(c) The shape of the generated wave shall be determined at a reduced voltage by connecting an oscilloscope across the forming resistor with the cable sample connected in parallel with the forming resistor. The capacitor bank is charged to the test voltage and then discharged through the forming resistor and test sample. The test sample shall be considered to have passed the test if there is no distinct change in the wave shape obtained with the initial reduced voltage compared to that obtained after the application of the test voltage.

(V) The following suggested formats may be used in submitting the test results to REA·

Environmental Conditioning _____

FREQUENCY 1 KILOHERTZ

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1				
3				
5				
7				
9				
11				
13				
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				
Overall Percent Difference in Average $\bar{x}$				

Environmental Conditioning _____

FREQUENCY 150 KILOHERTZ

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1				
3				
5				
7				
9				
11				
13				
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				
Overall Percent Difference in Average $\bar{x}$				

Environmental Conditioning _____

FREQUENCY 772 KILOHERTZ

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1				
3				
5				
7				
9				
11				
13				

FREQUENCY 772 KILOHERTZ—Continued

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				
Overall Percent Difference in.				
Average $\bar{x}$				

	Failures
Insulation Compression:	
Control	
Heat Age	
Temperature Cycling	
Surge Test (kilovolts):	
Conductor-to-Conductor	
Shield-to-Conductors	

Appendix B to 7 CFR 1755.870—Sheath Slitting Cord Qualification

(I) This test procedure described in this appendix is for qualification of initial and subsequent changes in sheath slitting cords.

(II) *Sample selection.* All testing shall be performed on two 1.2 m (4 ft) lengths of cable removed sequentially from the same 25 pair, 22 gauge jacketed cable. This cable shall not have been exposed to temperatures in excess of 38 °C since its initial cool down after sheathing.

(III) *Test procedure.* (1) Using a suitable tool, expose enough of the sheath slitting cord to permit grasping with needle nose pliers.

(2) The prepared test specimens shall be maintained at a temperature of 23 ± 1 °C for at least 4 hours immediately prior to and during the test.

(3) Wrap the sheath slitting cord around the plier jaws to ensure a good grip.

(4) Grasp and hold the cable in a convenient position while gently and firmly pulling the sheath slitting cord longitudinally in the direction away from the cable end. The angle of pull may vary to any convenient and functional degree. A small starting notch is permissible.

(5) The sheath slitting cord is considered acceptable if the cord can slit the jacket and/or shield for a continuous length of 0.6 m (2 ft) without breaking the cord.

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–14338 Filed 6–13–94; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1384–92; AG ORDER NO. 1893–94]

RIN 1115–AD18

Adjustment to the Examinations Fee Schedule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adjusts the Immigration and Naturalization Service (INS) Examinations Fee schedule. The increases are necessary to generate sufficient revenue to recover the costs of providing adjudication and naturalization services. This rule ensures that funds will be available to continue providing services to users while keeping increases as small as possible.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Donald L. Lowry, Staff Accountant, Fee Analysis and Operations Branch, Office of Finance; Immigration and Naturalization Service; 425 I Street, NW.; room 6240; Washington, DC 20536–0002; telephone 202–616–2754.

SUPPLEMENTARY INFORMATION:

I. Introduction

The INS published a proposed rule on January 10, 1994, at 59 FR 1308, to adjust the current Examinations Fee schedule. The proposed rule was initially published with a 30-day comment period. To ensure that the public had ample opportunity to review and comment on the proposed rule, the comment due date was extended from February 9, 1994 to March 11, 1994 (59 FR 5740, Feb. 8, 1994).

The fee adjustment is needed to comply with specific Federal immigration laws and the Federal user fee statute and regulations, which require the recipients of special benefits from Government services that are not directed to the public at large to bear the costs to the Government of providing those services. The fees amended in this rule result from an analysis of adjudication and naturalization services and associated costs for fiscal year 1993 and projected costs for fiscal year 1994. The revised fees are calculated to recover the costs of providing these special services and benefits.

Comments were received from 77 commenters, including 46 performing arts organizations, 15 agricultural organizations, 7 employers, 3 attorney organizations, 3 individual attorneys, 2 voluntary service organizations, and 1 member of Congress. The Department carefully considered all comments before preparing this final rule. Following is a discussion of the comments.

II. Summary of Comments

A. Petition for a Nonimmigrant Worker (Form I–129)

Sixty-six commenters, largely performing arts organizations and agricultural organizations, expressed dissatisfaction with the proposed fee schedule for the Petition for a Nonimmigrant Worker (Form I–129). The commenters opposed increasing the minimum fee from $80 ($70 base fee plus $10 fee per beneficiary) to $120 and the per worker fee from $10 to $20. Fifteen of these same commenters questioned the justification for assessing a per-worker fee for petitions with multiple unnamed beneficiaries.

In response to the public's comments, INS is making the following changes: Petitioners with multiple unnamed beneficiaries will no longer be assessed any per worker fee, and the base fee will increase from $70 to $75. The $5 increase is consistent with the general 7.5 percent increase to the current fee schedule, which was discussed in the notice of proposed rule.

On January 11, 1994, INS promulgated a final rule, 59 FR 1455, which allows a worker's dependents to be included in a petitioner's request for an extension of stay or change of status, where there is only one worker in the petition. That provision will go into effect at the time the form providing for this process becomes available. This rule sets a fee of $10 for each dependent included on an extension of stay or change of status request. Dependents of beneficiaries covered by multiple worker petitions must continue to file requests for an extension of stay or change of status on an Application to Extend/Change Nonimmigrant Status (Form I–539).

Accordingly, the new fee structure for the Petition for a Nonimmigrant Worker will be as follows:

Petition With Unnamed Beneficiaries

–Fee of $75 per petition.

Petition With Named Beneficiaries

–Base fee of $75 per petition plus either:
–$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;
–$80 per worker if requesting a change of status; or
–$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of $10 per dependent.

Two additional comments related to I–129 processing were received. One commenter stated that the current procedure includes Consulate or port-of-entry notification for visa issuance or admission purposes and the proposed procedure does not discuss this notification. The commenter questioned whether notification would continue. This rule amends only the Examination Fee schedule and does not change existing procedures; as noted above, this notification will continue.

One commenter also questioned the procedural change related to the $10 fee for each dependent of a beneficiary worker. The commenter stated that the beneficiary worker may be transferred to the United States several months in advance of that person's family members and questioned whether this delay between the two dates would present a problem for Consulate or port-of-entry processing.

Again, this rule only sets the fee for dependents included on an extension of stay or change of status request. The final rule promulgated at 59 FR 1455 provides for dependents to be included in a request for an extension of stay or change of status. An original petition is granted solely on behalf of the worker; the consular officer issues visas to dependents separately. Accordingly, the commenter's concerns are unfounded.

B. Application for Employment Authorization (Form I–765)

One commenter objected to the $10 increase for the employment authorization document (EAD). The commenter stated that EADs for asylum applicants are valid for only 6 months and that it is unfair and unreasonable to require an asylum applicant and dependent family members to pay a $70 fee every 6 months. The commenter suggests that if EAD cards were renewed for a significant period of time, such an increase would not be an unfair burden on the applicant.

The increase in the EAD fee is necessary to recover the costs of adjudicating the application. Under 8 CFR 208.7, an interim EAD for an asylum applicant may be granted for a period not to exceed 1 year. Although INS has the discretion to grant an EAD for a period of 6 months, most asylum EADs are valid for 1 year. Consequently, the situation described by the commenter should not arise frequently.

C. Application to Register Permanent Residence or Adjust Status (Form I–485)

One commenter objected to the $10 increase in fees for filing the I–485 and suggested a family ceiling on the fees charged. The commenter stated that the other costs associated with filing an I–485, such as the required physical examination, make the total costs prohibitive for a family.

The INS recognizes the commenter's concerns. However, it is not possible for INS to set a family ceiling and recover the costs of adjudicating applications through user fees, as required under section 286(m) of the Immigration and Nationality Act (INA). However, the fees for applicants under the age of 14 are $100, an increase of only $5. It should also be noted that fee waivers are available on a case-by-case basis, under 8 CFR § 103.7(c).

D. Application for Naturalization (N–400) and Application for Certificate of Citizenship (N–600)

One commenter criticized INS for increasing naturalization fees. The commenter opposed the increases stating that the income of many immigrant families is relatively low, that increased rates of naturalization are in our national interest, and that concerns about INS financial management and service delivery have yet to be resolved.

The INS recognizes the commenter's concern. However, as stated above, under section 286(m) of the INA, INS is required to recover the costs of adjudicating naturalization applications through user fees. Alternative revenue sources are not available. Increased naturalization fees are necessary to avoid applicants for other benefits paying higher fees to absorb the costs not recovered through the naturalization fees. In order to recover the costs, the naturalization fees must be increased.

E. Meaningful Opportunity To Comment on the Proposed Rule

One commenter stated that the public has been denied a meaningful opportunity to comment on the proposed rule because the proposed rule did not provide sufficient information to do so. The INS believes that sufficient information was provided in the proposed rule. Under the proposed rule, supporting documentation was available upon request and was provided to commenters who requested it. In addition, the comment period was extended an additional 30 days so that the public would have ample opportunity to fully review and comment on the proposed rule.

F. Indirect Costs Charged to the Examinations Fee Account

One commenter stated that certain functions in the legal proceedings program, such as adversary appearances, are not appropriately charged to the Examinations Fee Account. In 1992, INS performed a comprehensive review of the work that should be properly charged to the INS user fee accounts, and concluded that these legal costs are an appropriate and necessary expense of the adjudication and naturalization service process.

The same commenter stated that the proposed rule did not explain what management and administration (M&A) positions and functions are included in indirect costs, so that the commenter could not determine if they were appropriate. The proposed rule used the term management and administrative (M&A) in a descriptive sense. As commonly used, M&A refers to the costs of providing accounting, budget, personnel, equal employment opportunity, contracting and procurement, and general administration services. The proposed rule used the example of the costs of mail processing in discussing how the distribution-key concept works in allocating indirect costs among various accounts. From the example and from the general understanding of the term "M&A," INS believes that sufficient

information was given to allow a fair opportunity to comment on the appropriateness of charging M&A as indirect costs to the Examinations Fee Account.

G. Proportional Assignment of Indirect Costs to Each Examinations Fee

One commenter stated that INS did not explain why indirect costs are assigned in an "across-the-board" manner, rather than apportioning the indirect costs in the same ratio as the direct cost of the application. Various methods for allocating indirect costs exist; INS considers the current method to be reasonable. As INS continues to refine its fee structure, alternative allocation methodologies will be evaluated.

H. Plan to Improve Service

One commenter stated that the proposed rule did not discuss plans to improve service, such as expansion of INS service centers, elimination of backlogs, and acceleration of processing times.

Improvement efforts have been focused on processing more applications at the service centers and reducing the adjudicative work at the district offices. The expansion of centralized processing at the service centers is expected to result in expedited processing of routine cases. The district offices will retain adjudicative responsibilities for applications necessitating an interview or complex or unique adjudications where personal contact is necessary. The INS expects that staff will be shifted among district offices and service centers based on workload requirements.

Implementation of an automated system at district offices and continued improvement of that system for service center operations is also expected to improve productivity. This automated system, called CLAIMS, integrates many of the manual processes or discrete automated processes that adjudicators use now. The CLAIMS system is currently operational in the four INS service centers; in FY 1994, it will be installed at one district office. Plans for expansion to other sites and continued system enhancements are under constant review and dependent upon funding availability.

I. Fee Basis

One commenter stated that the proposed fees appear to be based on faulty or incomplete data and do not appear to be rationally related to the real work required to process any given application. As discussed in the proposed rule, INS examined the relevant costs of the Examinations Fee Account and computed the percentage revenue increase required to cover the costs, and that percentage, with limited exceptions, was applied to the existing fee schedule.

The INS also considered the feasibility of basing the proposed fees on 1992 costs measurements. The INS rejected this approach because of problems with 1992 data caused by the transition to a more automated system of productivity measurement. At this time, the current fee schedule, with specifically identified adjustments, reflects the best available data on costs, which is consistent with Office of Management and Budget and Department of Justice guidance. Future fee adjustments will reflect efforts to refine direct and indirect cost definitions and measurements.

The same commenter stated that the inclusion of inspection costs was not explained in the proposed rule. The costs of the Inspections program attributed to the Examinations Fee Account are exclusively related to examinations work performed by land border inspectors during periods in which they are not performing inspections. This allocation of adjudication workload to inspectors permits more efficient use of resources and results in reduced costs.

III. Fee Adjustments

The fee adjustments, as adopted in this rule, are shown in Exhibit 1.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule adjusts the current Examinations Fee schedule. Its financial impact on users of the services is small. In most cases, the fee increase is $5.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, because approximately 4 million people per annum will be assessed a user fee to recover the costs of providing adjudication and naturalization services.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Attorney General certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that it will not have a significant negative impact on family well-being.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7, paragraph (b)(1) is amended by revising the entries listed to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–17. For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$140.

Form I–90. For filing an application for Alien Registration Receipt Card

(Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name—$75.

Form I–102. For filing an application (Form I–102) for Arrival-Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$65.

Form I–129. For filing a petition for a nonimmigrant worker—If a petition with unnamed beneficiaries, a fee of $75 per petition. If a petition with named beneficiaries, a base fee of $75 plus: —$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission; —$80 per worker if requesting a change of status; or —$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of $10 per dependent.

* * * * *

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$80.

Form I–131. For filing an application for issuance of reentry permit—$70.

Form I–140. For filing a petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$75.

* * * * *

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government—$90.

Form I–193. For filing an application for waiver of passport and/or visa—$95.

Form I–212. For filing an application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$95.

* * * * *

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$80, except there is no fee for a petition seeking classification as an Amerasian.

Form I–485. For filing an application for permanent residence status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years.

* * * * *

Form I–526. For filing a petition for an alien enterpreneur—$155.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$75 plus $10 per coapplicant.

* * * * *

Form I–600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$155.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.—$155.

Form I–601. For filing an application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those sub-sections.)—$95.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$95.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence which is based on marriage—$80.

* * * * *

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$70.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$80. The maximum amount payable by the members of a family filing their applications concurrently shall be $225.

* * * * *

Form N–300. For filing an application for declaration of intention—$75.

* * * * *

Form N–400. For filing an application for naturalization—$95. For filing an application for naturalization under section 405 of the Immigration Act of 1990, if the applicant will be interviewed in the Philippines—$120.

* * * * *

Form N–470. For filing an application for section 316(b) or 317 of the Act benefits—$115.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$65.

Form N–600. For filing an application for certificate of citizenship under section 309(c) or section 341 of the Act—$100.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$80.

Form N–644. For filing an application for posthumous citizenship—$80.

* * * * *

Dated: June 8, 1994.

Janet Reno,

Attorney General.

Exhibit 1

Note: The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

[Revised Fees]

Form No.	Form name/description	Fee
I–17	Petition for Approval of School for Attendance by Nonimmigrant Students	$140
I–90	Application to Replace Alien Registration Card	75
I–102	Application for Replacement/Initial Nonimmigrant Arrival Departure Document	65
I–129	Petition for a Nonimmigrant Worker	See below.[1]
I–129F	Petition for Alien Finance(e)	75
I–130	Petition for Alien Relative	80
I–131	Application for Travel Document	70
I–140	Immigrant Petition for Alien Worker	75
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	90
I–192	Application for Advance Permission to Enter as Nonimmigrant	90
I–193	Application for Waiver of Passport and/or Visa	95

EXAMINATIONS FEE ACCOUNT—Continued

[Revised Fees]

Form No.	Form name/description	Fee
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	95
I–360	Petition for Amerasian, Widow(er), or Special Immigrant (except for a petition seeking classification as an Amerasian in which case the fee is waived).	80
I–485	Application to Register Permanent Residence or Adjust Status:	
	If 14 years of age or older	130
	If under 14 years of age	100
I–526	Immigrant Petition by Alien Entrepreneur	155
I–539	Application to Extend/Change Nonimmigrant Status	75 plus 10 per coapplicant.
I–600	Petition to Classify Orphan as an Immediate Relative	155
I–600A	Application for Advance Processing of Orphan Petition	155
I–601	Application for Waiver of Grounds of Excludability	95
I–612	Application for Waiver of the Foreign Residence Requirement	95
I–751	Petition to Remove the Condition on Residence	80
I–765	Application for Employment Authorization	70
I–817	Application for Voluntary Departure Under Family Unity Program	80
N–300	Application to File Declaration of Intention	75
N–400	Application for Naturalization	95
N–470	Application to Preserve Residence for Naturalization Purposes	115
N–565	Application for Replacement Naturalization/Citizenship Document	65
N–600	Application for Certificate of Citizenship	100
N–643	Application for Certificate of Citizenship in Behalf of an Adopted Child	80
N–644	Application for Posthumous Citizenship	80

[1] *Petition with Unnamed Beneficiaries:*
—Fee of $75 per petition.
Petition with Named Beneficiaries:
—Base fee of $75 per petition plus either:
—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;
—$80 per worker if requesting a change of status; or
—$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of $10 per dependent.

[FR Doc. 94–14441 Filed 6–13–94; 8:45 am]
BILLING CODE 4410–01–M

Office of the Attorney General

28 CFR Part 65

[INS No. 1449–92; AG Order No. 1892–94]
RIN 1115–AD40

Emergency Federal Law Enforcement Assistance: Immigration Emergency Fund

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule implements provisions in the Immigration and Nationality Act that establish an "Immigration Emergency Fund" and that provide for assistance to States and local governments for services provided, at the request of the Attorney General, to meet an immigration emergency declared by the President, to aid in the administration of the immigration laws of the United States, or to meet urgent demands arising from the presence of aliens in a State or local jurisdiction. This rule sets forth procedures governing: Requests for a Presidential declaration of an immigration emergency; requests from the Attorney General for state or local government assistance when the President has declared an immigration emergency and in certain other circumstances; and applications from States and local governments for assistance from the Immigration Emergency Fund.

EFFECTIVE DATE: June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: The Department of Justice ("Department") promulgated a proposed rule on January 14, 1992, 57 FR 1439, which set forth procedures and requirements for reimbursement from the Immigration Emergency Fund to States and localities for assistance provided in the absence of a Presidential determination that an immigration emergency exists under paragraph (b)(2) of section 404 of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101, note (b)(2). After receiving several comments, the rule was expanded and amended significantly, and the Department promulgated another proposed rule on November 5, 1993, 58 FR 58994. The proposed rule set forth procedures and requirements for reimbursement from the Immigration Emergency Fund to States and local governments under all the provisions of section 404(b) of the INA as required by section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992, Public Law 102–140, 105 Stat. 782, 832. The Supplementary Information section of the publication at 58 FR 58994 contains an exhaustive history of the legislation.

The second proposed rule originally required written comments to be submitted by December 6, 1993. On January 5, 1994, at 59 FR 558, the Department extended the comment period to January 26, 1994, and three sets of comments were received. Two were from government entities while the third was from a public policy group. The Department received and evaluated the comments as follows:

Comment: The definition of "assistance" for which the fund could be used to reimburse State and local governments should be expanded to include direct and indirect costs, such as overhead and administrative costs, associated with providing services and resources to aliens, including those illegal aliens incarcerated in jails and prisons for violation of State criminal

laws. Additionally, assistance should also include providing for basic medical, cash, and social service needs in the short run, and housing, education, and human service needs in the longer rule. This type of social service assistance should not be tied to the establishment of large shelter facilities.

Response: These changes have not been adopted. The Immigration Emergency Fund provides only limited resources which must be allocated in a judicious fashion. The Department believes that the use of the funds should be limited to assistance provided to the Attorney General in the enforcement and administration of the immigration laws of the United States. This view is supported by the statutory language, which provides for reimbursement for "assistance as required *by the Attorney General* * * *." 8 U.S.C. 1101, note (b)(2)(A) (emphasis added). The Attorney General's mission does not include providing social services or providing costs of incarcerating persons for violating State criminal laws. Thus, only in limited circumstances do these types of services assist the Attorney General.

Comment: It should be made clear that any denial of funds is without prejudice, and that there may be an opportunity for the States or local governments to renew their request.

Response: This change is unnecessary and has not been adopted. The regulation contains no language which would limit the ability of a State or local government to renew an application.

Comment: For the purpose of determining the increase in the number of asylum applications in an Immigration and Naturalization Service ("INS") district for a given quarter, the number of Cuban nationals who remain in the INS district after the expiration of their visitors visas should be included as *de facto* asylum applicants, whether or not the Cuban nationals have formally applied for asylum.

Response: This change has not been adopted. The suggested method for calculating the number of asylum applications filed in a certain quarter is inconsistent with the plain language of the statute and other portions of the INA. However, the Attorney General may consider the concerns raised by the comment regarding Cubans who remain without filing asylum applications as "other circumstances" justifying access to the fund.

Comment: The definition of "other circumstances" is weak, thus making it difficult to understand what this may cover. This definition should be reconsidered and elaborated upon by the Department before final regulations are published.

Response: This change has not been adopted. The statutory language indicates that Congress intended to give the Attorney General broad discretion in determining which "other circumstances" would justify access to the fund. The regulation should not unnecessarily limit that discretion.

Comment: The regulation concerning application requirements should be more specific. The application process should be triggered by a phone call by the chief executive of the impacted jurisdiction to the Attorney General declaring his or her intention to apply to access the fund. This call would immediately be followed by a facsimile correspondence reiterating the chief executive's intent to apply. Within twenty-four hours of the call and facsimile, the Attorney General and the chief executive or their designees would meet to facilitate the negotiation of the application. The written application would need to be submitted within five calendar days of this meeting and would include: (a) A cover letter from the chief executive; (b) a written narrative of the emergency conditions and listing the state point of contact; (c) a listing of the broad service categories required by the aliens; (d) a description of the services; (e) the number or estimated number of aliens to be served; (f) the cost or estimated cost to be incurred; and (g) time parameters for service provision with a proviso that access to the funds could be extended without formal reapplication in the case of exigent circumstances.

Response: The specific procedures recommended would be a sound and welcome way for a State or local government to present its request for funding, but the regulation has not been amended to require adherence to those specific procedures. The flexible application process prescribed in the regulation is sufficiently specific without being unduly burdensome in the information requirements or overly confining in the formal requirements of the application. The rule has been amended to allow the Attorney General to use the grant or cooperative agreement process to provide funding, in addition to negotiating a separate reimbursement agreement. Accordingly, State and local governments may also use standard grant applications. The informal communication recommended by the commentator is already included in the regulation at § 65.85(b), and is strongly encouraged.

Comment: The regulation is currently promulgated under 28 CFR part 65, which is entitled "Emergency Federal Law Enforcement Assistance." The regulation should be retitled to reflect the overall intent of the statute and the contents of the regulation more accurately.

Response: This change has not been adopted. The regulation remains codified under 28 CFR part 65. However, subpart I is entitled "Immigration Emergency Fund," and the Department will consider redesignating the regulation in the future.

Procedural Matters

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is promulgated in accordance with the principles set forth in Executive Order 12866, and the Department considers the rule a "significant regulatory action" within the meaning of section 3(f) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget ("OMB").

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The information collection requirements contained in this rule have been cleared by OMB under the provisions of the Paperwork Reduction Act. The OMB clearance number is 1115–0184.

List of Subjects in 28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 65 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 is revised to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 et seq.); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

2. Part 65 is amended by adding a new subpart I to read as follows:

Subpart I—Immigration Emergency Fund

§ 65.80 General.

The regulations of this subpart set forth procedures for implementing section 404(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101 note, by providing for Presidential determinations of the existence of an immigration emergency, and for payments from the Immigration Emergency Fund to State and local governments for assistance provided in meeting an immigration emergency. The regulations of this subpart also establish procedures by which the Attorney General may draw upon the Immigration Emergency Fund, without a Presidential determination that an immigration emergency exists, to provide funding to State and local governments for assistance provided as required by the Attorney General in certain specified circumstances.

§ 65.81 General definitions.

As used in this part:

Assistance means any actions taken by a State or local government directly relating to aiding the Attorney General in the administration of the immigration laws of the United States and in meeting urgent demands arising from the presence of aliens in the State or local government's jurisdiction, when such actions are taken to assist in meeting an immigration emergency or under any of the circumstances specified in section 404(b)(2)(A) of the INA. Assistance may include, but need not be limited to, the provision of large shelter facilities for the housing and screening of aliens, and, in connection with these activities, the provision of such basic necessities as food, water clothing, and health care.

Immigration emergency means an actual or imminent influx of aliens which either is of such magnitude or exhibits such other characteristics that effective administration of the immigration laws of the United States is beyond the existing capabilities of the Immigration and Naturalization Service ("INS") in the affected area or areas. Characteristics of an influx of aliens, other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Other circumstances means a situation that, as determined by the Attorney General, requires the resources of a State or local government to ensure the proper administration of the immigration laws of the United States or to meet urgent demands arising from the presence of aliens in a State or local government's jurisdiction.

§ 65.82 Procedure for requesting a Presidential determination of an immigration emergency.

(a) The President may make a determination concerning the existence of an immigration emergency after review of a request from either the Attorney General of the United States or the chief executive of a State or local government. Such a request shall include a description of the facts believed to constitute an immigration emergency and the types of assistance needed to meet that emergency. Except when a request is made by the Attorney General, the requestor shall file the original application with the Office of the President and shall file copies of the application with the Attorney General and with the Commissioner of INS.

(b) If the President determines that an immigration emergency exists, the President shall certify that fact to the Judiciary Committees of the House of Representatives and of the Senate.

§ 65.83 Assistance required by the Attorney General.

The Attorney General may request assistance from a State or local government in the administration of the immigration laws of the United States, or in meeting urgent demands where the need for assistance arises because of the presence of aliens in that State or local jurisdiction, and may provide funding to a State or local government relating to such assistance from the Immigration Emergency Fund, without a Presidential determination of an immigration emergency, in any of the following circumstances:

(a) An INS district director certifies to the Commissioner of INS, who shall, in turn, certify to the Attorney General, that the number of asylum applications filed in that INS district during the relevant calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter. For purposes of this paragraph, providing parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

(b) The Attorney General determines that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of a State or locality.

(c) The Attorney General determines that there exist any other circumstances, as defined in § 65.81 of this subpart, such that it is appropriate to seek assistance from a State or local government in administering the immigration laws of the United States or in meeting urgent demands arising from the presence of aliens in a State or local jurisdiction.

§ 65.84 Procedures for the Attorney General seeking State or local assistance.

(a) When the Attorney General determines to seek assistance from a State or local government under § 65.83 of this subpart or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government, and shall set forth those terms and conditions. Funding related to such assistance can be provided by a reimbursement agreement, grant, or cooperative agreement.

(b) A reimbursement agreement shall contain the procedures under which the State or local government is to obtain reimbursement for its assistance. A reimbursement agreement shall include the title of the official to whom claims are to be submitted, the intervals at which claims are to be submitted, a description of the supporting documentation to be submitted, and any limitations on the total amount of reimbursement that will be provided. Grants and cooperative agreements shall be made and administered in accordance with the uniform procedures in Part 66 of this title.

(c) In exigent circumstances, the Attorney General may agree to provide funding to a State or local government without a written agreement. A reimbursement agreement, grant, or cooperative agreement conforming to the specifications in this section shall be reduced to writing as soon as practicable.

§ 65.85 Procedures for State or local governments applying for funding.

(a) In the event that the chief executive of a State or local government

determines that any of the circumstances set forth in § 65.83 of this subpart exists, he or she may pursue the procedures in this section to submit to the Attorney General an application for a reimbursement agreement, grant, or cooperative agreement as described in § 65.84 of this subpart.

(b) The Department strongly encourages chief executives of States and local governments, if possible, to consult informally with the Attorney General and the Commissioner of INS prior to submitting a formal application. This informal consultation is intended to facilitate discussion of the nature of the assistance to be provided by the State or local government, the requirements of the Attorney General, if any, for such assistance, the costs associated with such assistance, and the Department's preliminary views on the appropriateness of the proposed funding.

(c) The chief executive of a State or local government shall submit an application in writing to the Attorney General, and shall file a copy with the Commissioner of INS. The application shall set forth in detail the following information:

(1) The name of the jurisdiction requesting reimbursement;

(2) All facts supporting the application;

(3) The nature of the assistance which the State or local government has provided or will provide, as required by the Attorney General, for which funding is requested;

(4) The dollar amount of the funding sought;

(5) A justification for the amount of funding being sought;

(6) The expected duration of the conditions requiring State or local assistance;

(7) Information about whether funding is sought for past costs or for future costs;

(8) The name, address, and telephone number of a contact person from the requesting jurisdiction.

(d) If the Attorney General determines that the assistance for which funding is sought under paragraph (c) of this section is appropriate under the standards of this subpart, the Attorney General may enter into a reimbursement or cooperative agreement or may make a grant in the same manner as if the assistance had been requested by the Attorney General as described under § 65.84 of this subpart.

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has expended the maximum amount authorized in section 404(b)(2)(B) of the INA. The Attorney General will make a decision with respect to any application submitted under this section, and containing the information described in paragraph (c) of this section, within 15 calendar days of receipt of such application.

(f) In exigent circumstances, the Attorney General may waive the requirements of this section concerning the form, contents, and order of consideration of applications, including the requirement in paragraph (c) of this section that applications be submitted in writing.

Dated: June 8, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–14440 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 94–007]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between January 1, 1994 and March 31, 1994, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that become effective and were terminated between January 1, 1994 and March 31, 1994, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, Thomas R. Cahill, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1994 and March 31, 1994, unless otherwise indicated.

Thomas R. Cahill,

Lieutenant Commander, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Baltimore 94–004	Popes Creek, MD	Safety Zone	3/6/94
Charleston 94–012	Socastee, SC	do	2/11/94
Charleston 94–035	Cooper River, Charleston, SC	do	3/23/94
Charleston 94–040	do	do	3/30/94
Corpus Christi 94–001	Gulf Intracoastal Waterway	do	1/5/94
Corpus Christi 94–002	Brownsville Ship Channel, TX	do	1/14/94
Corpus Christi 94–003	do	do	1/17/94
Corpus Christi 94–004	Matagorda Ship Channel, TX	do	1/19/94
Corpus Christi 94–005	Corpus Christi Ship Channel, TX	do	2/3/94
Corpus Christi 94–007	Brownsville Ship Channel, TX	do	2/19/94
Corpus Christi 94–008	Gulf Intracoastal Waterway	do	3/3/94
Huntington 94–001	Ohio River mile 209.0 to 211.0	do	3/11/94
Jacksonville 94–023	Jacksonville, FL	do	3/19/94
Louisville 94–001	Ohio River mile 468.5 to 473.0	do	1/28/94
Miami 93–125	Hollywood to Pompano Beach, FL	do	12/11/93
Miami 94–001	Key West Harbor, FL	do	1/1/94
Miami 94–002	Lake Worth, FL	do	1/3/94
Miami 94–031	Miami, FL	do	3/14/94
Miami 94–032	Fort Lauderdale, FL	do	3/24/94
New Orleans 93–015	Lower Mississippi River	do	9/13/93
New Orleans 94–006	do	do	2/6/94
New Orleans 94–007	do	do	2/9/94
P.W. Sound 94–001	Port Valdez, AK	do	1/3/94
Pittsburgh 94–001	Youghiogheny River	do	1/15/94
Port Arthur 94–001	Upper Calcasieu River	do	2/1/94
Port Arthur 94–002	Port of Beaumont, TX	Security Zone	2/11/94
Port Arthur 94–003	Neches River to Gulf of Mexico	do	2/15/94
San Diego 94–001	San Diego Bay, CA	do	2/22/94
San Francisco Bay 94–006	San Francisco Bay, CA	do	3/5/94
San Juan 94–011	San Juan, P.R.	Safety Zone	2/22/94
San Juan 94–029	do	do	3/18/94
St. Louis 94–002	Upper Mississippi River	do	1/19/94
St. Louis 94–005	do	do	3/11/94
St. Louis 94–006	Missouri River	do	4/7/94.
01–94–003	LPG Vessel MAERSK SUSSEX, NY and NJ	do	1/14/94
01–94–015	East River, NY	do	4/8/94
01–94–024	Scituate, MA	do	3/24/94
01–94–402	Boston, MA	do	3/14/94
02–93–034	Upper Mississippi River	Special Local	1/5/94
07–94–003	Hillsborough Bay, Tampa, FL	do	2/5/94
07–94–036	Intracoastal Waterway, St. Augustine, FL	do	3/27/94

[FR Doc. 94–14448 Filed 6–13–94; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–94–063]

Drawbridge Operation Regulations; Manchester Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: Pursuant to 33 CFR 117.43, the Coast Guard is providing notice that it has, at the request of the Town of Manchester, Massachusetts, authorized a temporary deviation for ninety (90) days from the operating regulations governing the Manchester Amtrak Bridge over Manchester Harbor at mile 1.0 in Manchester, Massachusetts.

The permanent regulations are published at 33 CFR 117.603. This deviation authorizes the Manchester Amtrak Bridge to open on signal from June 3, 1994 through August 31, 1994 from 8 a.m. to 9 p.m. At all other times at least 2 hours advance notice is required by calling the number posted at the bridge. This temporary deviation is being implemented to evaluate the effects of the extended operating hours and the impact on marine traffic at the Manchester Bridge. This notice also solicits comments on these changes to the operation of the bridge.

DATES: The deviation is effective for 90 days from June 3, 1994 through August 31, 1994.

Comments on effects of the deviation must be received on or before October 31, 1994.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, room 628 at the Captain John Foster Williams Federal Building, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350. The comments and other materials referenced in this notice will be available for inspection and copying by appointment at the above address. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Manchester Amtrak Bridge over Manchester Harbor has a vertical clearance of 6′ above mean high water (MHW) and 15′ above mean low water (MLW).

The Town of Manchester has requested a change from the operating regulations governing the Manchester Amtrak Bridge in 33 CFR 117.603 which requires that the Amtrak Bridge open on

signal from April 1 to November 1, 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m. This ninety day deviation extends the operating hours to require the bridge to open on signal from 8 a.m. to 9 p.m. from June 3, 1994 to August 31, 1994. This change will allow vessels mooring in Manchester Harbor upstream of the bridge to leave port at a reasonably early time and return to their moorings after their evening racing and sailing. Many vessels were unable to get underway at an early enough time for a day trip and return before the 6 p.m. time period. They were forced to tie up at town facilities or at other moorings until the the bridge was opened. Additionally, the bridge owner (Amtrak) will be required to post regulation signs up and down stream of the bridge indicating the operating hours and the number to call for an off hour opening. The bridge owner will also be required to install and maintain in good condition clearance gages on the up and down stream sides of the bridge. This deviation also requires the bridge to open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Request for Comments

The Coast Guard encourages interested persons to participate in evaluation of possible changes to the regulations by submitting written data, or arguments for or against this deviation. Persons submitting comments should include their name and address and identify this rulemaking (CGD01–94–063) and the specific section of this deviation to which each comment applies, and give reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a notice of proposed rulemaking and request additional comments as part of the rulemaking process. All comments received regarding the deviation period will be considered as part of the rulemaking. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under ADDRESSES.

Notice

Notice is hereby given that:

(1) The Coast Guard has granted the Town of Manchester, Massachusetts, a temporary deviation from the operating requirements listed in 33 CFR 117.603 governing the Manchester Amtrak Bridge over Manchester Harbor.

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of evaluating possible changes to the permanent regulations.

(3) The period of deviation is effective June 3, 1994 to August 31, 1994.

(4) During the deviation period the Manchester Amtrak Bridge shall operate as follows:

(i) The bridge shall open on signal 8 a.m. to 9 p.m.

(ii) From 9 p.m. to 8 a.m. the bridge shall open on signal if at least 2 hours advance notice is given by calling the number posted at the bridge.

(iii) The bridge shall open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Dated: May 31, 1994.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 94–14450 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4997–1]

Illinois: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Illinois has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter RCRA). The Environmental Protection Agency (EPA) has reviewed Illinois' application and has made a decision, subject to public review and comment, that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Illinois' hazardous waste program revisions, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA). Illinois' application for program revision is available for public review and comment.

EFFECTIVE DATE: Final authorization for Illinois shall be effective August 15, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Illinois' program revision application must be received by the close of business July 14, 1994. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Illinois' program revision application are available for inspection and copying, from 9 a.m. to 4 p.m., at the following addresses: Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, contact: Todd Marvel (217) 524–5024; USEPA, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, contact: Gary Westefer (312) 886–7450. Written comments should be sent to Mr. Gary Westefer, Illinois Regulatory Specialist, U.S. EPA, Office of RCRA, HRM–7J, 77 W. Jackson Blvd., Chicago, Illinois 60604, phone (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Westefer, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60624. Phone: 312/886–7450.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21, revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, and 270.

B. Illinois

Illinois initially received final authorization for its program effective January 31, 1986. (51 FR 3778, January 30, 1986). Illinois received authorization for revisions to its program effective on March 5, 1988 (53 FR 126, January 5, 1988), April 30, 1990 (55 FR 7320, March 1, 1990), and June 3, 1991 (56 FR 13595, April 3, 1991). On December 17, 1993, Illinois submitted a program revision application for additional program approvals. Today, Illinois is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Illinois' application, and has made an immediate final decision that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Illinois. The public may submit written comments on EPA's immediate final decision up until July 14, 1994. Copies of Illinois' application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Illinois' program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On August 15, 1994, Illinois will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous State authority
HSWA codification rule—delisting correction 1, June 27, 1989, 54 *FR* 27114 [1]	Rules 35 IAC 720.122, effective June 16, 1990.
Listing of spent pickle liquor—correction 2, August 3, 1987, 52 *FR* 28697	Rules 35 IAC 721.132, effective June 16, 1988.
Liability coverage—Corporate guarantee, July 11, 1986, 51 *FR* 25350–25356	Rules 35 IAC 724.247; 724.251; 725.247, effective July 16, 1987.
Amendments to part B information requirements for disposal facilities, June 22, 1987, 52 *FR* 23447–23450. As amended on September 9, 1987, 52 *FR* 33936.	Rules 35 IAC 703.185, effective December 3, 1987.
California list waste restrictions, July 8, 1987, 52 *FR* 23447–23450.[1] As amended on October 27, 1987, 52 *FR* 41295–41296 [1].	Rules 35 IAC 720.111; 722.170; 724.113; 725.113; 728.102; 728.103; 728.104; 728.107; 728.130; 728.132; 728.140; 728.142; 728.150; section 728 appendix C, effective June 16, 1988.
List (phase 1) of hazardous constituents for ground-water monitoring, July 9, 1987, 52 *FR* 25942–25953.	Rules 35 IAC 703.185; 724.198; 724.199; section 724 appendix I, effective June 16, 1988.
Identification and listing of hazardous waste, July 10, 1987, 52 *FR* 26012	Rules 35 IAC721, effective June 16, 1988.
Exception reporting for small quantity generators of hazardous waste, September 23, 1987, 52 *FR* 35894–35899 [1].	Rules 35 IAC 722.142; 722.144, effective June 16, 1988.
Liability requirements for hazardous waste facilities; corporate guarantee, November 18, 1987, 52 *FR* 44314–44321.	Rules 35 IAC 724.247; 725.247, effective June 16, 1988.
HSWA codification rule 2—permit application requirements regarding corrective action, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 703.185; 703.187, effective June 16, 1988.
HSWA codification rule 2—corrective action beyond the facility boundary, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 724.200; 724.201, effective June 16, 1988.
HSWA codification rule 2—corrective action for injection wells, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 704.151; 704.161; 725.101; 703.141, effective June 16, 1988.
HSWA codification rule 2—permit modification, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 702.184, effective June 16, 1988.
HSWA codification rule 2—permit as a shield provision December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 702.181, effective June 16, 1988.
HSWA codification rule 2—permit conditions to protect human health and the environment, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 703.181, effective June 16, 1988.
HSWA codification rule 2—post-closure permits, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 703.120; 703.121; 703.159; 703.160, effective June 16, 1988.
Hazardous waste miscellaneous units, December 10, 1987, 52 *FR* 46946–46965	Rules 35 IAC 703.183; 703.209; 704.161; 720.110; 724.110; 724.115; 724.118; 724.173; 724.190; 724.211; 724.212; 724.214; 724.217; 724.218; 724.244; 724.700; 724.701; 724.702; 724.703, effective June 16, 1988.
Technical corrections; identification and listing of hazardous waste, April 22, 1988, 53 *FR* 13382–13393.	Rules 35 IAC 721.133; section 721, appendix H, effective December 28, 1988.
Identification and listing of hazardous waste; technical correction, July 19, 1988, 53 *FR* 27162–27163 [1].	Rules 35 IAC 721.105, effective December 28, 1988.
Farmer exemptions; technical corrections July 19, 1988, 53 *FR* 27164–27165 [1]	Rules 35 IAC 703.123; 722.110; 724.101; 725.101; 728.101, effective December 28, 1988.
Identification and listing of hazardous waste; treatability studies sample, exemption, July 19, 1988, 53 *FR* 27290–27302.	Rules 35 IAC 720.110; 721.104, effective December 28, 1988.
Land disposal restrictions for first third scheduled wastes, August 17, 1988, 53 *FR* 31138–31222, as amended on February 27, 1989, 53 *FR* 8264–8266.	Rules 35 IAC 724.113; 724.173; 725.113; 725.173; 726.120; 728.101; 728.104; 728.107; 728.108; 728.130; 728.131; 728.132; 728.133; 728.140; 728.141; 728.142; 728.143; 728.150, effective December 28, 1988.
Hazardous waste management system; standards for hazardous waste storage and treatment tank systems, September 2, 1988, 53 *FR* 34079–37087 [1].	Rules 35 IAC 702.110; 720.110; 724.414; 724.290; 724.293; 724.296; 725.210; 725.214; 725.290; 725.293; 725.296; 725.301; effective November 13, 1989.
Identification and listing of hazardous waste; and designation, reportable quantities, and notification, September 13, 1988, 53 *FR* 35412–35421.	Rules 35 IAC 721.132; section 721, appendix G, effective November 13, 1989.

Federal requirement	Analogous State authority
Permit modifications for hazardous waste management facilities, September 28, 1988, 53 *FR* 37912–37942, as amended on September 28, 1988, 53 *FR* 41649.	Rules 35 IAC 702.110; 702.181; 702.149; 703.222; 703.223; 703.230; 703.260; 703.270; 703.271; 703.280; 703.281; 703.282; 703.283; Section 703 Appendix A; 705.128; 724.154; 724.212; 724.218; 725.212; 725.218; effective November 13, 1989.
Statistical methods for evaluating ground-water monitoring data from hazardous waste facilities, October 11, 1988, 53 *FR* 39720–39731.	Rules 35 IAC 724.191; 724.192; 724.197; 724.198; 724.199, effective November 13, 1989.
Identification and listing of hazardous waste; removal of iron dextran from the list of hazardous wastes, October 31, 1988, 53 *FR* 43878–43881.	Rules 35 IAC 721.133; section 721, appendix H, effective November 13, 1989.
Identification and listing of hazardous waste; removal of strontium sulfide from the list of hazardous wastes, October 31, 1988, 53 *FR* 43881–43884.	Rules 35 IAC 721.133; section 721, appendix H, effective November 13, 1989.
Standards for generators of hazardous waste, November 8, 1988, 53 *FR* 45089–45093.	Rules 35 IAC 722.120; section 722, appendix A, effective November 13, 1989.
Hazardous waste miscellaneous units; standards applicable to owners and operators, January 9, 1989, 53 *FR* 615–617.	Rule 35 IAC 703.183, effective November 13, 1989.
Amendment to requirements for hazardous waste incinerator permits, January 30, 1989, 54 *FR* 4286–4288.	Rule 35 IAC 703.225, effective April 16, 1990.
Changes to interim status facilities for hazardous waste management permits; procedures for post-closure permitting, March 7, 1989, 54 *FR* 9596–9609.	Rules 35 IAC 702.122; 703.121; 703.155; 703.157; 703.240; section 703, appendix A; 705.101; 705.201 705.212, effective April 16, 1990.
Land disposal restrictions amendments to first third scheduled wastes, May 2, 1989, 54 *FR* 18836–18838[1].	Rules 35 IAC 728.143, effective April 16, 1990.
Land disposal restrictions for second third scheduled wastes, June 23, 1989, 54 *FR* 26594–26652[1].	Rules 35 IAC 728.134; 728.141; 728.142; 728.143, effective August 22, 1990.
Land disposal restrictions; correction to the first third scheduled wastes, September 6, 1989, 54 *FR* 36967,[1] as amended on June 13, 1990, 55 *FR* 23935[1].	Rules 35 IAC 726.120; 728,101; 728.105; 728.106; 728.107; 728:108; 728.132; 728.133; 728.144; 728.150, effective August 22, 1990 as amended June 17, 1991.
Reportable quantity adjustment methyl bromide production wastes October 6, 1989, 54 *FR* 41402–41408[1].	Rules 35 IAC 721.132; section 721, appendix C; appendix G, Effective August 22, 1990.
Reportable quantity adjustment, December 11, 1989, 54 *FR* 50968–50979[1]	Rules 35 IAC 721.131; Section 721, appendix G; appendix H, effective August 22, 1990.
Land disposal restrictions third scheduled wastes, January 31, 1991, 56 *FR* 3864—3928[1].	Rules 35 IAC 721.120; 721.121; 721.122; 721.123; 721.124; 721.131; 721.133; section 721 Appendix G; 722.111; 722.134; 724.113; 724.239; 724.456; 724.381; 724.412; 724.416; 725.101; 725.113; 725.329; 725.356; 725.381; 725.412; 725.416; 728.101; 728.102; 728.103; 728.107; 728.108; 728.109; 728.135; 728.140; 728.141; 728.142; 728.143; section 703 appendix A; section 728 appendix D; appendix E; appendix F; appendix G; appendix H; section 728, table A; table C; table D; table E, effective June 17, 1991.
Land disposal restrictions for third third scheduled wastes, January 31, 1991, 56 *FR* 3864–3928[1].	Rules 35 IAC 721.103; 172.120; 721.131; 722.111; 722.134; 728.102; 728.107; 728.109; 728.133; 728.135; 728.140; 728.142; 728.143; section 703, appendix A; section 728, appendix D; appendix E; appendix G; appendix H; appendix I; section 728 table A; table B; table C; Table D; table E, Effective June 9, 1992.
Second correction to the third third land disposal restrictions, March 6, 1992, 57 *FR* 8086-8089[1].	Rules 35 IAC 724.113; 725.113; 728.103; 728.141; section 728, table D, effective March 26, 1993.
Sharing of Information with agency for toxic substances and disease registry, November 8, 1984, SWDA 3019(b).	Statute Ill. rev. stat. 11½, par. 1007, effective January 1, 1985.

[1] Indicates HSWA Provision.

EPA shall administer any RCRA hazardous waste permits or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, March 5, 1988, April 30, 1990, and June 3, 1991, the effective dates of Illinois' final authorizations for the RCRA base program and for the subsequent program revisions, respectively.

This authorization includes authorization for Illinois to impose certain land disposal prohibitions. Under 40 CFR 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes provided certain criteria are met. States that have authority to impose land disposal prohibitions may ultimately be authorized under RCRA Section 3006 to grant petitions for such exemptions. However, EPA is currently requiring that these petitions be handled at EPA Headquarters. It should be noted that Illinois has its own procedures for petition submission and approval to allow land disposal of a prohibited waste. Therefore, the petitioner must satisfy both Federal and Illinois requirements, and be granted approval by both EPA and the State.

Illinois is not authorized to operate the Federal program on Indian lands.

This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Illinois' application for program revisions meets all of the statutory and regulatory requirements established by RCRA, and its amendments. Accordingly, Illinois is granted final authorization to operate its hazardous waste program as revised. Illinois now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Illinois also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference, authorized State programs in 40 CFR part 272, to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of the Illinois program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Illinois' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 18, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–14414 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 272

[FRL–4895–5]

Authorization of State Hazardous Waste Management Program: Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), provides for the U.S. Environmental Protection Agency (EPA) to grant authorization to State agencies to operate their hazardous waste management programs in lieu of the Federal program. The state of Kansas has applied for authorization of revisions to its previously authorized hazardous waste management program under RCRA. The EPA has reviewed the Kansas application and has made a decision, subject to public review and comment, that the Kansas hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving the state's hazardous waste management program revisions. Kansas' application for program revisions is available for public review and comment.

DATES: Final authorization for Kansas shall be effective August 15, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Kansas program revisions application must be received by the close of business July 14, 1994.

ADDRESSES: Copies of the Kansas program revision application are available for inspection and copying during normal business hours at the following addresses: Hazardous Waste Section, Bureau of Waste Management, Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620–0001, 913–296–1600; and, US EPA Region 7, Library, 726 Minnesota Avenue, Kansas City, Kans 66101, 913–551–7241. Written comments should be sent to Gary Bertram, RCRA Branch, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913–551–7533.

FOR FURTHER INFORMATION CONTACT: Gary Bertram, (913) 551–7533.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of RCRA (42 U.S.C. 6926) allows EPA to authorize state hazardous waste management programs to operate in the states in lieu of the Federal hazardous waste program. This is done when a state submits to EPA a request for authorization demonstrating that the state hazardous waste program is equivalent, consistent with and no less stringent than the Federal program.

Revisions to state hazardous waste programs are necessary whenever federal or state statutory or regulatory authority is modified or when certain other changes occur. States with final authorization under section 3006(b) of RCRA have a continuing obligation to maintain state programs that are equivalent to, consistent with, and no less stringent than the federal hazardous waste management program. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124 and 260 through 271 that require corresponding changes in the state program in order for the state to maintain its authorization.

B. Kansas

Kansas initially received final authorization effective October 17, 1985. Kansas received authorization for revisions to its program effective June 25, 1990. Kansas submitted a draft authorization application on March 1, 1990, and submitted the final revision application on February 24, 1994.

To meet its obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program, Kansas has submitted a request to be authorized for additional RCRA authorities which have been promulgated by EPA since the Kansas base program approval.

The EPA has reviewed the state's application with respect to the requirements for state authorization contained in 40 CFR part 271 and determined that its hazardous waste program revision satisfies all of the

requirements to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications to Kansas. Today's decision is being published as an "immediate final" rule in accordance with the provisions of 40 CFR 271.21(b)(3). The public may submit written comments on this immediate final decision until the date noted in the "Dates" section of this document. Approval of the Kansas program revision shall become effective 60 days from today unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Those specific RCRA program portions which are being authorized today are listed below by their descriptive names and **Federal Register** citations.

Federal RCRA Provisions

Dioxin Waste Listing and Management Standards (50 FR 1978, January 14, 1985)
Paint Filter Test (50 FR 18370, April 30, 1985)
Codification Rule (50 FR 28702, July 15, 1985) (Only the following provisions: Household waste; Generator Requirements; Facility Permit Requirements; Permitting Requirements; Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves; Liquids in Landfills; Dust Suppression; Double Liners; Ground-Water Monitoring; Cement Kilns; Fuel Labeling; Pre-construction Ban; Permit Life; Omnibus Provision; Interim Status; Research and Development Permits; Hazardous Waste Exports; and Exposure Information)
Listing of TDI, DNT, and TDA Wastes (50 FR 42936, October 23, 1985)
Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces (50 FR 49164, November 29, 1985, (Amended on November 19, 1986 at 51 FR 41900 and April 13, 1987 at 52 FR 11822))
Listing of Spent Solvents (50 FR 53315, December 31, 1985)
Listing of EDB Wastes (51 FR 5330, February 13, 1986)
Listing of Four Spent Solvents (51 FR 6541, February 25, 1986)
Generators of 100 to 1000 kg Hazardous Waste (51 FR 10174, March 24, 1986)
Codification Rule, Technical Correction (51 FR 19176, May 28, 1986)
Standards for Hazardous Waste Storage and Treatment Tank Systems (51 FR 25470, July 14, 1986)
Exports of Hazardous Waste (51 FR 28686, August 8, 1986)
Standards for Generators—Waste Minimization Certifications (51 FR 55190, October 1, 1986)
Listing of EBDC (51 FR 37725, October 24, 1986)
Land Disposal Restrictions (51 FR 40572, November 7, 1986 (as amended on June 4, 1987, 52 FR 21010))
Revised Manual SW–846; Amended Incorporation by Reference (52 FR 8072, March 16, 1987)
Closure/Post-Closure Care for Interim Status Surface Impoundments (52 FR 8704, March 19, 1987)
Definition of Solid Waste, Technical Corrections (52 FR 21306, June 5, 1987)
Amendments to Part B Information Requirements for Disposal Facilities (52 FR 23447, June 22, 1987 (as amended on September 9, 1987, 52 FR 33936))
List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring (52 FR 25942, July 9, 1987)
Identification and Listing of Hazardous Waste (52 FR 26012, July 10, 1987)
Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee (52 FR 44314, November 18, 1987)
Hazardous Waste Miscellaneous Units (52 FR 46946, December 10, 1987)
Technical Corrections; Identification and Listing of Hazardous Waste (53 FR 13382, April 22, 1988)
Identification and Listing of Hazardous Waste; Technical Correction (53 FR 27162, July 19, 1988)
Farmer Exemptions; Technical Corrections (53 FR 27164, July 19, 1988)
Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption ([53 FR 27290, July 19, 1988)
Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems (53 FR 34079, September 2, 1988)
Permit Modifications for Hazardous Waste Management Facilities (53 FR 37912, September 28, 1988 (as amended on October 24, 1988, 53 FR 41649))
Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities (53 FR 39720, October 11, 1988)
Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes([53 FR 43878, October 31, 1988)
Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes (53 FR 43881, October 31, 1988)
Standards for Generators of Hazardous Waste (53 FR 45089, November 8, 1988)
Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (54 FR 615, January 9, 1989)
Amendment to Requirements for Hazardous Waste Incinerator Permits (54 FR 4286, January 30, 1989)
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting (54 FR 9596, March 7, 1989)

The state will assume lead responsibility for issuing permits for those program areas authorized today. For those HSWA provisions for which the state is not authorized, EPA will retain lead responsibility. For those permits which will now change to state lead from EPA, EPA will transfer copies of any pending applications, completed permits or pertinent file information to the state within 30 days of the effective date of this authorization. The EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. The EPA will also be responsible for enforcing the terms and conditions of RCRA permits regarding HSWA requirements until the state has the authority to address the HSWA requirements.

The state has agreed to review all State issued permits and to modify or reissue them as necessary to require compliance with the currently approved state law and regulations. When the state reissues federally issued permits as state permits, the state will take the lead in enforcing such permits, with the exception of those HSWA requirements for which the state has not received authorization.

C. Decision

I conclude that the Kansas application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kansas is granted final authorization to operate its hazardous waste management program, as revised. Kansas now has responsibility for the permitting of treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Kansas also has primary enforcement responsibilities, although EPA retains

the right to conduct inspections under sections 3007, 3013 and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain federal regulations in favor of the Kansas program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This rulemaking is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended [42 U.S.C. 6912(a), 6926, 6974(b)].

Dated: May 28, 1994.

William Rice,

Regional Administrator.

[FR Doc. 94–14285 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR parts 107, 172 and 176

Hazardous Materials

CFR Correction

In title 49 of the Code of Federal Regulations, parts 100 to 177, revised as of October 1, 1993, make the following corrections:

§ 107.502 [Corrected]

1. On page 36, in § 107.502(f)(1), "September 1, 1995" should read "September 1, 1991".

§ 172.420 [Corrected]

2. On page 386, in § 172.420(a), the illustration should be displayed as follows:

§ 172.422 [Corrected]

3. On page 387, in § 172.422(a), the illustration should be displayed as follows:

§ 172.521 [Corrected]

4. On page 397, in § 172.521(a), the illustration should be displayed as follows:

§ 172.546 [Corrected]

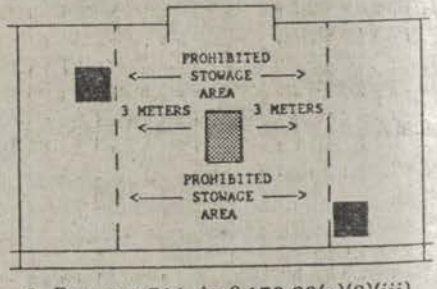
5. On page 402, in § 172.546(a), the illustration should be displayed as follows:

§ 172.556 [Corrected]

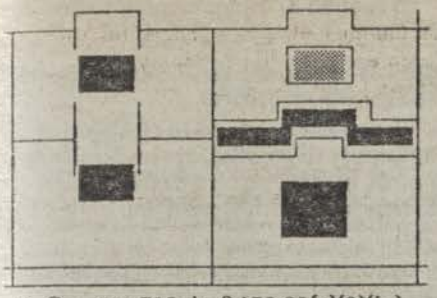
6. On page 404, in § 172.556(a), the illustration should be displayed as follows:

§ 176.83 [Corrected]

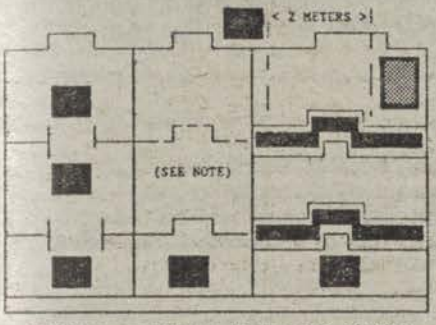
7. On page 711, in § 176.83(c)(2)(ii), the illustration should be displayed as follows:



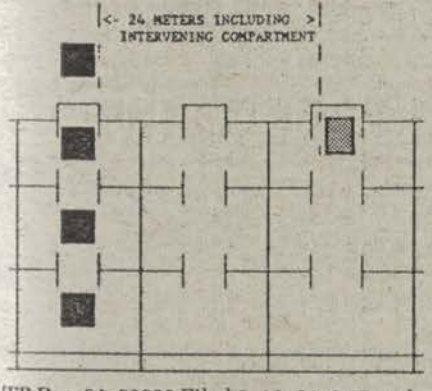
8. On page 711, in § 176.83(c)(2)(iii), the illustration should be displayed as follows:



9. On page 712, in § 176.83(c)(2)(iv), the illustration should be displayed as follows:



10. On page 712, in § 176.83(c)(2)(v), the illustration should be displayed as follows:



[FR Doc. 94–99999 Filed 6–13–94; 8:45 am]

BILLING CODE 1505-01-D

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 826

Equal Access To Justice Act Fees

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: The NTSB is adopting various housekeeping amendments to its Equal Access to Justice Act (EAJA) rules to reflect current law and practice.

DATES: The new rules will be effective on June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–1952.

SUPPLEMENTARY INFORMATION: The Board hereby adopts five editorial amendments to its rules at 49 CFR 826, each of which is explained below. Because these amendments are intended to make no changes but are intended only to reflect current law and practice; they are being made effective without notice and comment.

1. Section 826.2 is amended to remove outdated information that was responsive to the 1981 extension of EAJA and is no longer relevant.

2. By notice published in the **Federal Register** on April 22, 1992, the Board increased its cap on attorney fees contained at 49 CFR 826.6(b). We adopted a formula tied to the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, unless a more specific geographic index is published for the locality. This "CPI" is the generally understood "cost of living" index that is widely used as a price inflator in labor and contract matters. The rule contained U.S. City figures through 1992. Our amendment here adds the 1993 figure.

3. In 1985, EAJA was amended (Pub. L. No. 99–80) to reduce limitations on its application. The $1 million/$5 million net worth limits for individuals and businesses, respectively, contained in Title 5 U.S.C. 504(b) (1) were increased to $2 million/$7 million caps. We amended our rules at § 826.4(b) (1) and (2) to reflect this change, but failed to make a similar modification to § 826.21(b). We do so here, reflecting current law.[1]

4. We take this opportunity to codify our ruling in *Administrator* v. *Holloway*, NTSB Order EA–4155 (served May 3, 1994), by amending § 826.24 to indicate that the Board is without authority to grant extensions to file EAJA applications.

5. Lastly, we amend § 826.31 to provide that our rules of practice in part 821 apply to EAJA proceedings, to the extent not inconsistent with other, more specific rules in part 826.

As required by the Regulatory Flexibility Act, we certify that the adopted rules will not have a substantial impact on a significant number of small entities. What effect they may have, however, would be beneficial to small entities by clarifying our procedures. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

[1] Lloyd Ericcson has petitioned for this change, which petition we here grant.

List of Subjects in 49 CFR Part 826

Claims, Equal access to justice, Lawyers.

Accordingly, 49 CFR part 826 is amended as set forth below.

PART 826—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

1. The authority citation for part 826 continues to read as follows:

Authority: Section 203(a)(1) P. L. 99–80, 99 Stat. 186 (5 U.S.C. 504).

2. Section 826.2 is revised to read as follows:

§ 826.2 When the Act applies.

The Act applies to any adversary adjudication identified in § 826.3 as covered under the Act.

3. Section 826.6 is amended by revising paragraph (b)(1) to read as follows:

§ 826.6 Allowable fees and expenses.

* * * * *

(b)(1) No award for the fee of an attorney or agent under these rules may exceed $75 indexed as follows:

$$\frac{X}{\$75/hr} = \frac{CPI\_New}{CPI\_1981}$$

The CPI to be used is the annual average CPI, All Urban Consumers, U.S. City Average, All Items, except where a local, All Item index is available. Where a local index is available, but results in a manifest inequity vis-a-vis the U.S. City Average, the U.S. City Average may be used. The numerator of that equation is the yearly average for the year(s) the services were provided, with each year calculated separately. If an annual average CPI for a particular year is not yet available, the prior year's annual average CPI shall be used. This formula increases the $75 statutory cap by indexing it to reflect cost of living increases, as authorized in 5 U.S.C. 504(b)(1)(A)(ii). Application of these increased rate caps requires affirmative findings under § 821.6(c) of this chapter. For ease of application, available U.S. City figures are reproduced as follows:

1981	90.9
1982	96.5
1983	99.6
1984	103.9
1985	107.6
1986	109.6
1987	113.6
1988	118.3
1989	124.0
1990	130.7

1991	136.2
1992	140.3
1993	144.5

* * * * *

4. Section 826.21 is amended by revising paragraph (b) introductory text to read as follows:

§ 826.21 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

5. Section 826.24 is amended by revising paragraph (a) to read as follows:

§ 826.24 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case no later than the 30 days after the Board's final disposition of the proceeding. This 30-day deadline is statutory and the Board has no authority to extend it.

* * * * *

6. Section 826.31 is revised to read as follows:

§ 826.31 Filing and service of documents and general procedures.

The rules contained in 49 CFR part 821 apply to proceedings under the Act, unless they are superseded by or are inconsistent with a provision of this part.

Issued in Washington, DC on this 8th day of June, 1994.

Carl W. Vogt,

Chairman.

[FR Doc. 94–14339 Filed 6–13–94; 8:45 am]

BILLING CODE 7533–01–P

Proposed Rules

Federal Register
Vol. 59, No. 113
Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF90

Prevailing Rate Systems: Change of Lead Agency Responsibility for the Cleveland, Ohio, Wage Area for Pay-Setting Purposes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to change the lead agency responsibility for the Cleveland, Ohio, Federal Wage System (FWS) wage area from the National Aeronautics and Space Administration (NASA) to the Department of Veterans' Affairs (VA) for pay-setting purposes. This change would recognize the fact that VA is now the major employer of FWS employees in the Cleveland, Ohio, FWS wage area.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration (NASA) is the lead agency for the Cleveland, Ohio, Federal Wage System (FWS) wage area, and the NASA Lewis Research Center is the host activity for the local FWS wage survey. FWS employment at the Center has been declining in recent years. NASA has requested that the Department of Veterans' Affairs (VA) assume lead agency responsibility for the Cleveland wage survey. VA now has more FWS employees in the Cleveland wage area than any other agency, has the resources to carry out local wage surveys in the wage area, and is willing to assume responsibility as lead agency effective for the next full-scale wage survey scheduled to begin in the wage area in April 1995. The Federal Prevailing Rate Advisory Committee has reviewed and concurred with this proposed change.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B is amended for Cleveland, Ohio, by removing the lead agency "NASA" and adding in its place "VA".

[FR Doc. 94–14275 Filed 6–13–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Crop Insurance Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations, effective for the 1995 and succeeding reinsurance years to revise the general qualifications for being awarded a Standard Reinsurance Agreement. This rule intends to provide additional information so that FCIC can more accurately identify those insurance companies at risk of bankruptcy.

DATES: Written comments pursuant to this rule must be received by June 29, 1994.

ADDRESSES: Comments pursuant to this proposal should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250. Hand messenger delivery may be made to, Suite 500, 2101 L Street, NW., Washington, DC. Comments received may be viewed and copied at Suite 503, 2101 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 254–8450.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of this regulation under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This action will not have a significant economic effect on a substantial number of small entities. This action does not increase the paperwork burden on the reinsured company because the reinsured company must already provide the additional information required by this regulation to the state in which it is licensed. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR 400.169, must be exhausted before judicial action may be brought.

Since reinsured companies must already provide the additional information required by the proposed rule to the state which licenses them, this proposed rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

The standard requirements for being eligible to obtain a Standard Reinsurance Agreement (Agreement) with FCIC are found in 7 CFR 400, subpart L, and currently require that a reinsured company pass eight out of eleven National Association of Insurance Commissioners (NAIC) Insurance Regulatory Information System (IRIS) ratios. These ratios are meant to be an early warning device, alerting state regulators to insurance companies that may be in financial distress. These ratios are indicators that evaluate changes in an insurance company's financial condition. This rule proposes that FCIC add six additional radios to the current eleven IRIS ratios to improve the overall evaluation of a reinsured company's financial condition, to require the reinsured company to explain discrepancies in all ratios, and to provide a financial plan to overcome each discrepancy. The additional ratios include one new IRIS ratio, Gross Premium to Surplus, three ratios used by A.M. Best (Combined Ratio After Policyholder Dividends, Quick Liquidity, and Return on Surplus) found in *Best's Key Rating Guide*, a Two-Year Change to Surplus Ratio developed by FCIC which calculates the same as the One-Year Change to Surplus IRIS ratio but for a two-year period; and a Net Change in Cash and Short-Term Investments ratio also developed by FCIC to measure net cash flow development.

Thirty-three profitability, leverage, liquidity, and loss reserve ratios were calculated by FCIC for each current reinsured company. These calculations include both (NAIC), (IRIS), and A.M. Best ratios representing the current industry standard with which the reinsured company should be familiar. While it is proposed that only selected ratios will be used to determine eligibility, all ratios are available for financial analysis. The data required to complete the ratio calculations are derived from the Statutory Annual Financial Statement submitted by the reinsured company to the state insurance departments and FCIC. However, FCIC may supplement financial information contained in the Statutory Annual Financial Statement with information obtained from other audited or unaudited financial statements prepared in accordance with Generally Accepted Accounting Principles.

The ratios were evaluated to determine which ratios within each category best represent Multiple Peril Crop Insurance (MPCI) liability and its impact on insurance companies. The selection criteria included factors such as the short-term nature and annual cash flow cycle of MPCI insurance, and the varying size and business mix of the insurance company. For each ratio an acceptable range was established to determine whether a company passed or failed the ratio.

The current surplus requirement utilizes a Minimum Surplus Factor which limits a reinsured company's liability under the MPCI program based on the surplus available to the reinsured company. The liabilities of other lines of business written by the reinsured company are generally not considered. However, if a reinsured company underwrites only MPCI and crop-hail insurance, both liabilities will be considered. Since much of FCIC's MPCI insurance is delivered by insurers that write considerable premium and policies in the crop-hail market, increased evaluation using additional ratios for evaluating and comparing each company's financial integrity is necessary.

Seventeen ratios were selected for the general qualifications, including the eleven present NAIC IRIS ratios. Company profitability is measured by the following six ratios: *Combined Ratio After Policyholder Dividends, Two-Year Overall Operating, One-Year Change in Surplus, Two-Year Change in Surplus, Return on Surplus, and Investment Yield.* The profitability on an MPCI reinsured company is dependent on company underwriting practices, catastrophic loss experience and recovery, and its ability to generate an adequate return on investments.

A reinsured company's liquidity and cash management are measured by the following four ratios: *Agents' Balances to Surplus, Quick Liquidity, Liabilities to Liquid Assets, and Net Change in Cash and Short-Term Investments.* The combination of varying annual loss experience, loss payout to premium collection time frame, and MPCI accounting procedures, require the company maintain sufficient liquidity. Cash and short-term investment management is a key factor in maintaining sufficient liquidity and meeting current obligations.

The four leverage ratios used are: *Gross Premium to Surplus, Net Written Premium to Surplus, Change in Net Writings, and Surplus Aid to Surplus.* These measures will indicate if a reinsured company may be overexposing their surplus to risk variation and reinsurance dependency. The three loss reserve ratios used are: *One-Year Reserve Development to Surplus, Two-Year Reserve Development to Surplus, and Estimated Current Reserve Deficiency to Surplus.* These ratios determine if reserves have been understated to increase surplus and to estimate current reserve adequacy.

Section 400.173 is removed as it is not necessary after revising Subpart L to determine if the insurer is otherwise financially sound. If an insurer does not pass the required ratios and submits a financial plan that does not alleviate discrepancies in the required ratios, the reinsured company will be considered not financially sound and will not be awarded a Standard Reinsurance Agreement.

All participating insurance companies in the crop insurance industry have been fully advised of the content of this proposed rule during the preparation stage and in fact have participated in developing this rule. Since the rule must be effective prior to the effective date of the Standard Reinsurance Agreement (July 1, 1994), it has been

determined that for good cause, a 15 day comment period is sufficient. In May, FCIC held a meeting for the express purpose to introduce and discuss the SRA and its standards for approval prior to its publication. All parties interested in the SRA were invited. Prior to its publication, a copy of this rule was sent to all persons interested in the crop insurance program.

List of Subjects in 7 CFR Part 400

Crop Insurance.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR part 400, subpart L of the General Administrative Regulations effective for the 1995 and succeeding reinsurance years as follows:

1. The authority citation for 7 CFR part 400, subpart L is revised to read as follows:

Authority: 7 U.S.C. 1501–1520.

2. The heading for subpart L is revised to read as follows:

Subpart L—Reinsurance Agreement—Standards for Approval

3. Section 400.161 is amended by removing paragraph (f), redesignating paragraphs (a) through (e) as paragraphs (b) through (f), and adding a new paragraph (a) to read as follows:

§ 400.161 Definitions.

* * * * *

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer does business, and the subsequent Audited Financial Report filed with the state insurance department as prescribed in the National Association of Insurance Commissioners Property and Casualty Annual State Instructions. These statement are to be audited by an independent Certified Public Accountant.

* * * * *

4. Section 400.162 is revised to read as follows:

§ 400.162 Qualification ratios.

The seventeen qualification ratios include:

(a) Twelve National Association of Insurance Commissioner's (NAIC) Insurance Regulatory Information System (IRIS) ratios found in § 400.170(d)(1) (i) and (ii) and § 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xiii), (xiv), and (xv) and referenced in "Using the NAIC Insurance Regulatory Information System" distributed by NAIC, 120 West 12th St., Kansas City, MO, 64105–1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in *Best's Key Rating Guide*, A.M. Best, Ambest Road, Oldwick, N.J., 08858–0700;

(c) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period; and

(d) One ratio found in § 400.170(d)(2)(xii) which is also formulated by FCIC by dividing the net change in cash and short-term investments by the cash and short-term investment balance for the prior year.

5. Section 400.170 is revised to read as follows:

§ 400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be a licensed or admitted insurer in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual Statutory Financial Statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured multiplied by the appropriate Minimum Surplus Factor, found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.50%) of all its reinsured gross premium is written in that state;

(d) Have and meet the ratio requirement of Gross Premium to Surplus and Net Written Premium to Surplus and at least ten of the fifteen optional ratios in this section based on the most recent Annual Statutory Financial Statement, and comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus	Less than 900%.
(ii) Net Written Premium to Surplus	Less than 300%.
(2) Optional:	
(i) Two-Year Overall Operating Ratio	Less than 100%.
(ii) Agents' Balances to Surplus	Less than 40%.
(iii) One-Year Change in Surplus	Greater than −10%. and less than 50%.
(iv) Two-Year Change in Surplus	Greater than −10%.
(v) Combined Ratio After Policyholder Dividends	Less than 115%.
(vi) Change in Writings	Greater than −33%. and less than 33%.
(vii) Surplus Aid to Surplus	Less than 15%.
(viii) Quick Liquidity	Greater than 20%.
(ix) Liabilities to Liquid Assets	Less than 105%.
(x) Return on Surplus	Greater than −5%.
(xi) Investment Yield	Greater than 4.5%. and less than 10%.
(xii) Net Change in Cash/Short-Term Investments	Greater than −20%.
(xiii) One-Year Reserve Development to Surplus	Less than 20%.
(xiv) Two-Year Reserve Development to Surplus	Less than 20%.
(xv) Estimated Current Reserve Deficiency to Surplus	Less than 25%.

(e) Submit to FCIC all of the following statements:

(1) Annual Statutory Financial Statements;

(2) Statutory Management Discussion & Analysis;

(3) Most recent State Insurance Department Examination Report;

(4) Actuarial Opinion of Reserves;

(5) Annual GAAP Statement or Form 10K (does not apply to Mutual Insurance Companies);

(6) Audited Annual Report to Shareholders; and

(7) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

6. Section 400.171 is revised to read as follows:

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the state from submitting an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170(a),(b),(c),(d), and (e), submit an Annual Statutory Financial Statement certified by a Certified Public Accountant, which if not exempted, would have been filed with the insurance department of any state in which it does business.

7. Section 400.172 is revised to read as follows.

§ 400.172 Qualifying with less than twelve ratios meeting the specified requirements.

An insurer with less than twelve ratios meeting the requirements contained in § 400.170 may qualify if, in addition to the requirements of § 400.170(a),(b),(c) and (e), the insurer:

(a) Submits a financial management plan, acceptable to FCIC, to eliminate each deficiency indicated by the ratios, or provide an acceptable explanation if any failed ratio is not relevant to the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

§ 400.173 [Removed]

8. Section 400.173 is removed and reserved.

§ 400.174 [Amended]

9. In Section 400.174, the words "financial statement" are removed and the words "Annual Statutory Financial Statement" are added in their place.

§ 400.175 [Amended]

10. In Section 400.175(a), the words "financial statement" are removed and the words "Annual Statutory Financial Statement or Financial Statement" are added in their place.

Done in Washington, DC on June 2, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-14296 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-08-M

Federal Crop Insurance Corporation

7 CFR Part 406

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Nursery Crop Insurance regulations effective for the 1995 and succeeding crop years, by allowing a six month delay in the payment of premiums. The premium billing date will be extended for up to six months from September 30, to March 31 of the subsequent year insurance attaches.

DATES: Written comments, data, and opinions on this rule must be submitted no later than June 29, 1994, to be sure of consideration.

ADDRESSES: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314. Hand messenger delivery may be made to, Suite 500, 2101 L Street, NW., Washington, DC. Comments received may be viewed and copied at Suite 503, 2101 L. Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1994.

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on the producers served by this voluntary crop insurance program because this action liberalizes the terms of the nursery crop insurance contract for the insured. Extending credit to producers may have a minor economic effect on the insurer only if producers do no pay their premium. However, based on past experience, non-payment of nursery crop premiums has been insignificant. For years in which premium payment have been deferred, only two disputes over premium payment have occurred. This represents less than one percent of the total nursery crop policies purchased. As these disputes have not yet been resolved, all premiums may potentially be paid. Further FCIC will administratively extend the date for payment by the reinsured company when necessary to be consistent with the final date the insured is required to submit premium payment. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that the policies and procedures contained in this rule do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures in this rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not

retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent therewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought for actions taken under this policy or before any proceedings for the imposition of civil penalties under 7 U.S.C. 1506 or under the Program Fraud Civil Remedies may be effective.

Because it is urgent that insurance companies and producers be notified as soon as possible, and because of the need to file actuarial tables on time, public comments will be accepted for 15 days after publication of this rule.

Background

The nursery crop insurance policy is the only Federal crop insurance policy that requires premium payment in full prior to insurance attachment. Premium for other Federal crop insurance policies can be paid later, usually at or near harvest. FCIC took such action for the 1993 and 1994 crop years. Discontinuing this practice would be burdensome to the insured, therefore, FCIC intends to continue to allow the later payment of premiums. The insurance premium will be changed from September 30 preceding the crop year, to March 31 of the crop year.

Written comments received pursuant to this proposed rule will be made available for public inspection and copying in suite 500, 2101 L Street, NW., Washington DC during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 406

Crop Insurance, Nursery, Premium deferred.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Nursery Crop Insurance Regulations (7 CFR part 406) effective for the 1995 and subsequent crop years, by amending the provisions for coverage. This rule amends the regulations set forth herein in the following instances:

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended in the contract by revising subsection 5. (a) to read as follows:

§ 406.7 The application and policy.

* * * * *

5. Annual Premium.

a. The annual premium is earned and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. The date for payment of the premium will be deferred until March 31 of the crop year.

* * * * *

Done in Washington, DC on June 2, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–14402 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 457

Common Crop Insurance Regulations; Regulations for the 1994 and Subsequent Crop Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations. The number of years a policy does not earn a premium without policy termination is proposed to be changed from one year to three years. The intended effect of this amendment is to allow a producer to rotate crops without policy cancellation. The arbitration procedures would apply to all disagreements on factual determinations and be in accordance with the rules of the American Arbitration Association. Currently, the arbitration procedures apply only to disagreement on production to be counted. The intended effect of this amendment is to broaden the applicability of arbitration procedures to other possible disagreements under such policies.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than August 15, 1994 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250 or delivered to suite 500, 2101 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, 202–254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1999.

A summary of this rule has been submitted to the Office of Management and Budget (OMB) to be determined if it meets the requirements of a "significant regulation" as defined by Executive Order 12866.

Executive Order 12612, Federalism. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 through 612) these regulations will not have a significant impact on a substantial number of small entities. The regulatory revision is limited to reinsured companies and their agents and crop producers insured under the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of General Counsel has certified to OMB that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457) as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 457.8 is amended by revising subsection 2.(e) and section 17 of the Common Crop Insurance Policy to read as follows:

§ 457.8 The application and policy.

* * * * *

2. Life of Policy, Cancellation, and Termination

* * * * *

(e) Your Policy will terminate if no premium is earned for 3 consecutive years.

* * * * *

17. Arbitration

If you and we fail to agree on any factual determination, disagreement will be resolved, in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by the Federal Crop Insurance Corporation (FCIC) must be resolved through the FCIC appeal regulation at 7 CFR part 400, subpart J.

* * * * *

Done in Washington, DC on May 11, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–14312 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 94–95]

RIN 1550–AA75

Risk-Based Capital Standards; Bilateral Netting Requirements

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its risk-based capital standards to recognize the risk-reducing benefits of netting arrangements. Under the proposal, savings associations would be permitted to net, for risk-based capital purposes, interest and exchange rate contracts (rate contracts) subject to legally enforceable bilateral netting contracts that meet certain criteria. The OTS is proposing these amendments on the basis of proposed revisions to the Basle Accord which would permit the recognition of such netting arrangements. These amendments parallel recent amendments proposed by the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC). 59 FR 26456 (May 20, 1994). The effect of the proposed amendments would be to allow thrift institutions to net positive and negative mark-to-market values of rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk-weighted assets.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Written comments should be submitted to the Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 94–95. These submissions may be hand delivered at 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed or misidentified submissions will not be considered in this notice of proposed rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Senior Program Manager, Capital Policy (202) 906–6455; Lorraine E. Waller, Counsel (Banking and Finance) (202) 906–6458, Regulations & Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The international risk-based capital standards (Basle Accord) [1] include a framework for calculating risk-weighted assets by assigning assets and off-balance sheet items, including interest and exchange rate contracts, to broad risk categories based primarily on credit risk. The OTS and the other banking agencies [2] each adopted in 1989 similar frameworks to assess the capital adequacy of the banking organizations under their supervision. Banking organizations and savings associations (institutions) must hold capital against their overall credit risk, that is, generally, against the risk that a loss will be incurred if a counterparty defaults on a transaction.

Under the risk-based capital framework, off-balance sheet items are incorporated into risk-weighted assets by first determining the on-balance sheet credit equivalent amounts for the items and then assigning the credit equivalent amounts to the appropriate risk category according to the obligor, or if relevant, the guarantor or the nature of the collateral. For many types of off-balance sheet transactions, the on-balance sheet credit equivalent amount is determined by multiplying the face amount of the item by a credit conversion factor. For interest and exchange rate contracts however, credit equivalent amounts are determined by summing two amounts: the current exposure and the estimated potential future exposure.[3]

The current exposure (sometimes referred to as replacement cost) of a contract is derived from its market value. In most instances the initial market value of a contract is zero.[4] An institution should mark-to-market all of its rate contracts to reflect the current market value of the transaction in light of changes in the market price of the

[1] The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] The banking agencies are the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

[3] Exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily payment of variation margin are excluded from the risk-based ratio calculations.

[4] An options contract has a positive value at inception, which reflects the premium paid by the purchaser. The value of the option may be reduced due to market movements but it cannot become negative. Therefore, unless an option has zero value, the purchaser of the option contract will always have some credit exposure, which may be greater than or less than the original purchase price, and the seller of the option contract will never have credit exposure.

contracts or in the underlying interest or exchange rates. Unless the market value of a contract is zero, one party will always have a positive mark-to-market value for the contract, while the other party (counterparty) will have a negative mark-to-market value.

An institution holding a contract with a positive mark-to-market value is "in-the-money," that is, it would have the right to receive payment from the counterparty if the contract were terminated. Thus, an institution that is in-the-money on a contract is exposed to counterparty credit risk, since the counterparty could fail to make the expected payment. The potential loss is equal to the cost of replacing the terminated contract with a new contract that would generate the same expected cash flows under the existing market conditions. Therefore, the in-the-money institution's current exposure on the contract is equal to the market value of the contract.

An institution holding a contract with a negative mark-to-market value, on the other hand, is "out-of-the-money" on that contract, that is, if the contract were terminated, the institution would have an obligation to pay the counterparty. The institution with the negative mark-to-market value has no counterparty credit exposure because it is not entitled to any payment from the counterparty in the case of counterparty default. Consequently, a contract with a negative market value is assigned a current exposure of zero. A current exposure of zero is also assigned to a contract with a market value of zero, since neither party would suffer a loss in the event of contract termination. In summary, the current exposure of a rate contract equals either the positive market value of the contract or zero.

The second part of the credit equivalent amount for rate contracts, the estimated potential future exposure (often referred to as the add-on), is an amount that represents the potential future credit exposure of a contract over its remaining life. This exposure is calculated by multiplying the notional principal amount of the underlying contract by a credit conversion factor that is determined by the remaining maturity of the contract and the type of contract.[5] The potential future credit exposure is calculated for all contracts, regardless of whether the mark-to-market value is zero, positive, or negative.

The potential future exposure is added to the current exposure to arrive at a credit equivalent amount.[6] Each credit equivalent amount is then assigned to the appropriate risk category, according to the counterparty or, if relevant, the guarantor or the nature of the collateral. The maximum risk weight applied to such rate contracts is 50 percent.

B. Netting and Current Risk-Based Capital Treatment

The banking agencies and the Basle Supervisors' Committee have long recognized the importance and encouraged the use of netting arrangements as a means of improving interbank efficiency and reducing counterparty credit exposure. Netting arrangements are increasingly being used by institutions engaging in rate contracts. Often referred to as master netting contracts, these arrangements typically provide for both payment and close-out netting. Payment netting provisions permit an institution to make payments to a counterparty on a net basis by offsetting payments it is obligated to make with payments it is entitled to receive and, thus, to reduce its costs arising out of payment settlements.

Close-out netting provisions permit the netting of credit exposures if a counterparty defaults or upon the occurrence of another event such as insolvency or bankruptcy. If such an event occurs, all outstanding contracts subject to the close-out provisions are terminated and accelerated, and their market values are determined. The positive and negative market values are then netted, or set off, against each other to arrive at a single net exposure to be paid by one party to the other upon final resolution of the default or other event.

The potential for close-out netting provisions to reduce counterparty credit risk, by limiting an institution's obligation to the net credit exposure, depends upon the legal enforceability of the netting contract, particularly in insolvency or bankruptcy.[7] In this regard, the Basle Accord noted that while close-out netting could reduce credit risk exposure associated with rate contracts, the legal status of close-out netting in many of the G–10 countries was uncertain and insufficiently developed to support a reduced capital charge for such contracts.[8] There was particular concern that a bank's credit exposure to a counterparty was not reduced if liquidators of a failed counterparty might assert the right to "cherry-pick," that is, demand performance on those contracts that are favorable and reject contracts that are unfavorable to the defaulting party.

Concern over "cherry-picking" led the Basle Supervisors' Committee to limit the recognition of netting in the Basle Accord. The only type of netting that was considered to genuinely reduce counterparty credit risk at the time the Accord was endorsed was netting accomplished by novation.[9] Under legally enforceable netting by novation, "cherry-picking" cannot occur and, thus, counterparty risk is genuinely reduced. The Accord stated that the Basle Supervisors' Committee would continue to monitor and assess the effectiveness of other forms of netting to determine if close-out netting provisions could be recognized for risk-based capital purposes.

The banking agencies' risk-based capital standards provide for the same treatment of rate contracts as the Basle Accord, but require that institutions use the current exposure method. The banking agencies, in adopting their

[5] For interest rate contracts with a remaining maturity of one year or less, the factor is 0% and for those over one year, the factor is .5%. For exchange rate contracts with a maturity of one year of less, the factor is 1% and for those over one year the factor is 5%.

Because exchange rate contracts involve an exchange of principal upon maturity and are generally more volatile, they carry a higher conversion factor. No potential future credit exposure is calculated for single-currency interest-rate swaps in which payments are made based on two floating indices (basis swaps).

[6] This method of determining credit equivalent amounts for rate contracts is known as the *current exposure method*, which is used by most international banks. The Basle Accord permits, subject to each country's discretion, an alternative method for determining the credit equivalent amount known as the *original exposure method*. Under this method, the capital charge is derived by multiplying the notional principal amount of the contract by a credit conversion factor, which varies according to the original maturity of the contract and whether it is an interest or exchange rate contract. The conversion factors, which are greater than those used under the current exposure method, make no distinction between current exposure and potential future exposure.

[7] The primary criterion for determining whether a particular netting contract should be recognized in the risk-based capital framework is the enforceability of that netting contract in insolvency or bankruptcy. In addition, the netting contract as well as the individual contracts subject to the netting contract must be legally valid and enforceable under non-insolvency or non-bankruptcy law, as is the case with all contracts.

[8] While payment netting provisions can reduce costs and the credit risk arising out of daily settlements with a counterparty, such provisions are not relevant to the risk-based capital framework since they do not in any way affect the counterparty's gross obligations.

[9] Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract, for the single net amount, is legally substituted for the amalgamated gross obligations. Parties to the novation contract, in effect, offset their obligations to make payments on individual transactions subject to the novation contract with their right to receive payments on other transactions subject to the contract.

standards, generally stated they would work with the Basle Supervisors' Committee in its continuing efforts with regard to the recognition of netting provisions for capital purposes.

C. Basle Supervisors' Committee Proposal

Since the Basle Accord was adopted, a number of studies have confirmed that close-out netting provisions can serve to reduce counterparty risk. In response to the conclusions of these studies, as well as to industry support for greater acceptance of netting contracts under the risk-based capital framework, the Basle Supervisors' Committee issued a consultative paper on April 30, 1993, proposing an expanded recognition of netting arrangements in the Basle Accord.[10] Under the proposal, for purposes of determining the current exposure amount of rate contracts subject to legally enforceable bilateral close-out netting provisions (that is, close-out netting provisions with a single counterparty), an institution could net the contracts' positive and negative mark-to-market values.

Specifically, the Basle proposal states that a banking organization would be able to net rate contracts subject to a legally valid bilateral netting contract for risk-based capital purposes if it satisfied the appropriate national supervisor(s) that:

(1) In the event of a counterparty's failure to perform due to default, bankruptcy or liquidation, the banking organization's claim (or obligation) would be to receive (or pay) only the net value of the sum of unrealized gains and losses on included transactions;

(2) It has obtained written and reasoned legal opinions stating that in the event of legal challenge, the netting would be upheld in all relevant jurisdictions; and

(3) It has procedures in place to ensure that the netting arrangements are kept under review in light of changes in relevant law.

The Basle Supervisors' Committee agreed that if a national supervisor is satisfied that a bilateral netting contract meets these minimum criteria, the netting contract may be recognized for risk-based capital purposes without raising safety and soundness concerns. The Basle Supervisors' Committee proposal includes a footnote stating that if any of the relevant supervisors is dissatisfied with the status of the enforceability of a netting contract under its laws, the netting contract would not be recognized for risk-based capital purposes by either counterparty.

In addition, the Basle Supervisors' Committee is proposing that any netting contract that includes a *walkaway clause* be disqualified as an acceptable netting contract for risk-based capital purposes. A walkaway clause is a provision in a netting contract that permits the non-defaulting counterparty to make only limited payments, or no payments at all, to the estate of the defaulter even if the defaulter is a net creditor under the contract.

Under the proposal, a banking organization would calculate one current exposure under each qualifying bilateral netting contract. The current exposure would be determined by adding together (netting) the positive and negative market values for all individual interest rate and exchange rate transactions subject to the netting contract. If the net market value is positive, that value would equal the current exposure. If the net market value is negative or zero, the current exposure would be zero. The add-on for potential future credit exposure would be determined by calculating individual potential future exposures for each underlying contract subject to the netting contract in accordance with the procedure already in place in the Basle Accord.[11] A banking organization would then add together the potential future credit exposure amount (always a positive value) of each individual contract subject to the netting arrangement to arrive at the total potential future exposure it has under those contracts with the counterparty. The total potential future exposure would be added to the net current exposure to arrive at one credit equivalent amount that would be assigned to the appropriate risk category.

D. Description of the Proposal

The banking agencies concur with the Basle Supervisors' Committee determination that the legal status of close-out netting provisions has developed sufficiently to support the expanded recognition of such provisions for risk-based capital purposes. Therefore, the OTS is proposing to amend its risk-based capital standards in a manner consistent with the Basle Supervisors' Committee's proposed revision to the Basle Accord and the recently proposed amendments by the OCC and the FRB. These proposed amendments would allow institutions to net the positive and negative market values of interest and exchange rate contracts subject to a qualifying, legally enforceable bilateral netting contract to calculate one current exposure for that netting contract.

The proposed amendments would add provisions setting forth criteria for a qualifying bilateral netting contract and an explanation of how the credit equivalent amount should be calculated for such contracts. The risk-based capital treatment of an individual contract that is not subject to a qualifying bilateral netting contract would remain unchanged.

For interest and exchange rate contracts that are subject to a qualifying bilateral netting contract under the proposed standards, the credit equivalent amount would equal the sum of (i) the current exposure of the netting contract and (ii) the sum of the add-ons for all individual contracts subject to the netting contract. (As with all contracts, mark-to-market values for netted contracts would be measured in dollars, regardless of the currency specified in the contract.) The current exposure of the bilateral netting contract would be determined by adding together all positive and negative mark-to-market values of the individual contracts subject to the bilateral netting contract.[12] The current exposure would equal the sum of the market values if that sum is positive, or zero if the sum of the market values is zero or negative. The potential future exposure (add-on) for each individual contract subject to the bilateral netting contract would be calculated in the same manner as for non-netted contracts. These individual potential future exposures would then be added together to arrive at one total add-on amount.

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[10] The paper is entitled "The Prudential Supervision of Netting, Market Risks and Interest Rate Risk." The section applicable to netting is subtitled "The Supervisory Recognition of Netting for Capital Adequacy Purposes." This paper is available for review through the OTS's public information office.

[11] Under the proposal, a banking organization could net in this manner for risk-based capital purposes if it uses, as all U.S. banking organizations are required to use, the current exposure method for calculating credit equivalent amounts of rate contracts. Organizations using the original exposure method would use revised conversion factors until market risk-related capital requirements are implemented, at which time the original exposure method will no longer be available for netted transactions.

[12] For regulatory capital purposes, the agencies would expect that institutions would normally calculate the current exposure of a bilateral netting contract by consistently including *all* contracts covered by that netting contract. In the event a netting contract covers transactions that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less or instruments traded on exchanges that require daily payment of variation margin—institutions may elect to consistently either include or exclude all mark-to-market values of such transactions when determining net current exposures.

The proposed amendments provide that an institution may net, for risk-based capital purposes, interest and exchange rate contracts only under a written bilateral netting contract that creates a single legal obligation covering all included individual rate contracts and that does not contain a walkaway clause. In addition, if a counterparty fails to perform due to default, insolvency, bankruptcy, liquidation or similar circumstances, the institution must have a claim to receive a payment, or an obligation to make a payment, for only the net amount of the sum of the positive and negative market values on included individual contracts.

Today's proposal requires that a savings association obtain a written and reasoned legal opinion(s), representing that an organization's claim or obligation, in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, would be found by the relevant court and administrative authorities to be the net sum of all positive and negative market values of contracts included in the bilateral netting contract.[13] The legal opinion normally would cover (i) the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities and, if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts covered by the bilateral netting contract; and (iii) the law that governs the netting contract. The multiple jurisdiction requirement is designed to ensure that the netting contract would be upheld in any jurisdiction where the contract would likely be enforced or whose law would likely be applied in an enforcement action, as well as the jurisdiction where the counterparty's assets reside.

A legal opinion could be prepared by either an outside law firm or in-house counsel. If a savings association obtained an opinion on the enforceability of a bilateral netting contract that covered a variety of underlying contracts, it generally would not need a legal opinion for each individual underlying contract that is subject to the netting contract, so long as the individual underlying contracts were of the type contemplated by the legal opinion covering the netting contract.

The complexity of the legal opinions will vary according to the extent and nature of the organization's involvement in rate contracts. For instance, an institution that is active in the international financial markets may need opinions covering multiple foreign jurisdictions as well as domestic law. The OTS expects that in many cases a legal opinion will focus on whether a contractual choice of law would be recognized in the event of default, insolvency, bankruptcy or similar circumstances in a particular jurisdiction rather than whether the jurisdiction recognizes netting. For example, a U.S. institution might engage in interest rate swaps with a non-U.S. institution under a netting contract that includes a provision that the contract will be governed by U.S. law. In this case the U.S. institution should obtain a legal opinion as to whether the netting would be upheld in the U.S. and whether the foreign courts would honor the choice of U.S. law in default or in an insolvency, bankruptcy, or similar proceeding.

For a savings association that engages solely in domestic rate contracts, the process of obtaining a legal opinion may be much simpler. For example, for an institution that is an end-user of a relatively small volume of domestic rate contracts, the standard contracts used by the dealer bank may already have been subject to the mandated legal review. In this case the end-user institution may obtain a copy of the opinion covering the standard dealer contracts, supported by the bank's own legal opinion.

The proposed amendments require a savings association to establish procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law. This review would apply to any conditions that, according to the required legal opinions, are a prerequisite for the enforceability of the netting contract, as well as to any adverse changes in the law.

As with all of the provisions of the risk-based capital standards, a savings association must maintain in its files documentation adequate to support any particular risk-based capital treatment. In the case of a bilateral netting contract, a savings association must maintain in its files documentation adequate to support the bilateral netting contract. In particular, this documentation should demonstrate that the bilateral netting contract would be honored in all relevant jurisdictions as set forth in this rule. Typically, these documents would include a copy of the bilateral netting contract, legal opinions, and any related English translations.

The OTS would have the discretion to disqualify any or all contracts from netting treatment for risk-based capital purposes if the bilateral netting contract, individual contracts, or associated legal opinions do not meet the requirements set out in the applicable standards. In the event of such a disqualification, the affected individual contracts subject to the bilateral netting contract would be treated as individual non-netted contracts under the standards.

As a general matter, relevant legal provisions for institutions in the U.S. make it clear that netting contracts with close-out provisions enable such organizations to setoff included individual transactions and reduce the obligations to a single net amount in the event of default, insolvency, bankruptcy, liquidation, or similar circumstances.

Today's proposal provides that netting by novation arrangements would *not* be grandfathered under the standards if such arrangements do not meet all of the requirements proposed for qualifying bilateral netting contracts. Although netting by novation would continue to be recognized under the proposed standards, institutions may not have the legal opinions or procedures in place that would be required by the proposed amendments. The OTS believes that holding all bilateral netting contracts to the same standards will promote certainty as to the legal enforceability of the contracts and decrease the risks faced by counterparties in the event of a default.

E. Request for Comment

The OTS is seeking comment on all aspects of its proposed amendments to the risk-based capital standards. In addition, the OTS notes that under current risk-based capital standards for individual contracts, the degree to which collateral is recognized in assigning the appropriate risk weight is based on the market value of the collateral in relation to the credit equivalent amount of the rate contract. The OTS seeks comment on the nature of collateral arrangements and the extent to which collateral might be recognized in bilateral netting contracts, particularly taking into account legal implications of collateral arrangements (e.g., whether the collateral pledged for

[13] The Financial Accounting Standards Board (FASB) has issued Interpretation No. 39 (FIN 39) relating to the "Offsetting of Amounts Related to Certain Contracts." FIN 39 generally provides that assets and liabilities meeting specified criteria may be netted under generally accepted accounting principles (GAAP). However, FIN 39 does not specifically require a written and reasoned legal opinion regarding the enforceability of the netting contract in bankruptcy and other circumstances. Therefore, under this proposal a banking organization might be able to net certain contracts in accordance with FIN 39 for GAAP reporting purposes, but not be able to net those contracts for risk-based capital purposes.

an individual transaction would be available to cover the net counterparty exposure in the event of legal challenge) and procedural difficulties in monitoring collateral levels.

F. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS hereby certifies that this proposed rule will not have a significant impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

The OTS believes that a small institution is more likely than a large institution to enter into relatively uncomplicated transactions under standard bilateral netting contracts and may need only to review a legal opinion that has already been obtained by its counterparties.

G. Executive Order 12866

It has been determined that this proposal is not a significant regulatory action as defined in Executive Order 12866.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set out in the preamble, part 567, of chapter v, title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828(note).

2. Section 567.6 is amended by revising paragraph (a)(2)(v) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(v) *Off-balance sheet contracts; interest-rate and foreign exchange rate contracts (Group E)*—(A) *Calculation of credit equivalent amounts.* The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with paragraph (a)(2)(v)(B) of this section is equal to the sum of the current credit exposure, *i.e.*, the replacement cost of the contract, and the potential future credit exposure of the off-balance sheet rate contract. The calculation of credit equivalent amounts must be measured in U.S. dollars, regardless of the currency or currencies specified in the off-balance sheet rate contract.

(*1*) *Current credit exposure.* The current credit exposure is determined by the mark-to-market value of the off-balance sheet rate contract. If the mark-to-market value is positive, then the current credit exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a savings association may net positive and negative mark-to-market values of off-balance sheet rate contracts if subject to a bilateral netting contract as provided in paragraph (a)(2)(v)(B) of this section.

(*2*) *Potential future credit exposure.* The potential future credit exposure on an off-balance sheet rate contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal[9] by one of the following credit conversion factors, as appropriate:[10]

Remaining maturity	Interest rate contracts (percents)	Foreign exchange rate contracts (percents)
One year or less	0	1.0
Over one year	0.5	5.0

(B) *Off-balance sheet rate contracts subject to bilateral netting contracts.* In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a savings association may net off-balance sheet rate contracts subject to a bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(*1*) The bilateral netting contract is in writing;

(*2*) The bilateral netting contract creates a single legal obligation for all individual off-balance sheet rate contracts covered by the bilateral netting contract, and provides, in effect, that the savings association would have a single claim or obligation either to receive or pay only the net amount of the sum of the positive and negative mark-to-market values on the individual off-balance sheet rate contracts covered by the bilateral netting contract in the event that a counterparty, or a counterparty to whom the bilateral netting contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or other similar circumstances;

(*3*) The savings association obtains a written and reasoned legal opinion(s) that represents that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy or similar circumstances, the relevant court and administrative authorities would find the savings association's exposure to be the net amount under:

(*i*) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(*ii*) The law that governs the individual off-balance sheet rate contracts covered by the bilateral netting contract; and

(*iii*) The law that governs the bilateral netting contract;

(*4*) The savings association establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the bilateral netting contract continues to satisfy the requirements of this section; and

(*5*) The savings association maintains in its files documentation adequate to support the netting of an off-balance sheet rate contract.[11]

(C) *Walkaway clause.* A bilateral netting contract that contains a walkaway clause is not eligible for netting for purposes of calculating the current credit exposure amount. The term "walkaway clause" means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the

[9] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[10] No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit equivalent amount is measured solely on the basis of the current credit exposure.

[11] By netting individual off-balance sheet rate contracts for the purpose of calculating its credit equivalent amount, a savings association represents that documentation adequate to support the netting of an off-balance sheet rate contract is in the savings association's files and available for inspection by the OTS. Upon determination by the OTS that a savings association's files are inadequate or that a bilateral netting contract may not be legally enforceable under any one of the bodies of law described in paragraph (a)(2)(v)(*3*)(*i*) through (*iii*) of this section, the underlying individual off-balance sheet rate contracts may not be netted for the purposes of this section.

bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of a defaulter is a net creditor under the bilateral netting contract.

(D) *Risk weighting.* Once the savings association determines the credit equivalent amount for off-balance sheet rate contracts, that amount is assigned to the risk-weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantee. However, the maximum weight that will be applied to the credit equivalent amount of such off-balance sheet rate contracts is 50 percent.

(E) *Exceptions.* The following off-balance sheet rate contracts are not subject to the above calculation, and therefore, are not considered part of the denominator of a savings association's risk-based capital ratio:

(*1*) A foreign exchange rate contract with an original maturity of 14 calendar days or less; and

(*2*) Any interest rate or foreign exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

* * * * *

Dated: June 1, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–14266 Filed 6–13–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–30–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections of the strut skin in the area of the precooler exhaust vent for cracks on the inboard and outboard struts, and repair, if necessary. This action would require inspections of an expanded area for certain airplanes, and inspections of airplanes on which a skin doubler has been installed as terminating action for the existing AD. This proposal is prompted by reports of strut skin fatigue cracks and heat damage found aft of the edges of skin doublers installed on certain Model 747 series airplanes. The actions specified by the proposed AD are intended to prevent separation of an engine due to overheating and subsequent cracking of the engine strut.

DATES: Comments must be received by August 8, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 28, 1987, the FAA issued AD 87–04–21, Amendment 39–5543 (52 FR 3793, February 6, 1987), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections of the strut skin in the area of the precooler exhaust vent to detect cracks on the inboard and outboard struts, and repair, if necessary. That action also provides for an optional terminating modification (installation of frame stiffeners and skin doublers) for the repetitive inspections. That action was prompted by reports of extensive damage to struts on several airplanes. The requirements of that AD are intended to prevent separation of an engine due to overheating and subsequent cracking of the engine strut.

Since the issuance of that AD, the FAA has received reports of fatigue cracks found in the strut skin and heat damage found aft of the edges of skin doublers. These skin doublers had been installed on certain Model 747 series airplanes as terminating action for certain requirements contained in AD 87–04–21 and AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990). (AD 90–06–06 requires, in part, incorporation of certain structural modifications specified in the original issue, Revision 1, or Revision 2 of Boeing Service Bulletin 747–54–2091.) Further, cracking of the skin doublers and the underlying number 3 stringer also was found on one of these airplanes.

Subsequently, the FAA has reviewed and approved Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990, that describes procedures for a visual inspection of the strut skin and internal structure in the area of the precooler exhaust vent for cracks, heat discoloration, and wrinkles on the inboard and outboard struts of certain airplanes, and on the outboard struts of certain other airplanes. The service bulletin also describes procedures for

repetitive inspections if no crack, heat discoloration, or wrinkle is found; and installation of a skin doubler if any crack, heat discoloration, or wrinkle is found.

The FAA finds that the inspection areas specified in the Boeing service bulletin must be expanded since cracks and heat damage have been reported in locations beyond those inspection areas.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 87–04–21 to require the following:

1. For airplanes on which a frame stiffener and a skin doubler specified in certain revisions of Boeing Service Bulletin 747–54–2091 have been installed: Repetitive visual inspections to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from the edge of the skin doubler to nacelle station (NAC STA) 300 on the inboard and outboard struts, and repair, if necessary. This inspection area has been expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from the doubler edge to NAC STA 300. (This inspection zone excludes the area covered by the skin doubler.)

2. For airplanes on which a frame stiffener and a skin doubler specified in certain revisions of Boeing Service Bulletin 747–54–2091 have not been installed: Repetitive visual inspections to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from NAC STA 230 to NAC STA 300 on the inboard and outboard struts, and repair, if necessary. This inspection area has been expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from NAC STA 230 to NAC STA 300.

The actions would be required to be accomplished in accordance with procedures described in the service bulletin described previously.

There are approximately 250 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 87–04–21, and retained in this AD, will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that inspection requirement on U.S. operators is estimated to be $880, or $220 per airplane, per inspection cycle.

The new inspections that would be added by this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed inspection requirements of this AD on U.S. operators is estimated to be $880, or $220 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5543 (52 FR 3793, February 6, 1987), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–30–AD. Supersedes AD 87–04–21, Amendment 39–5543.

Applicability: Model 747 series airplanes equipped with General Electric CF6 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of an engine due to overheating and subsequent cracking of the engine strut, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984: Prior to the accumulation of 10,000 total hours time-in-service, or within the next 7½ months after March 13, 1987 (the effective date of AD 87–04–21, Amendment 39–5543), whichever occurs later, perform a visual inspection to detect cracks of the strut skin in the area of the precooler exhaust vent on the inboard and outboard struts of Group 1 airplanes, and on the outboard struts of Group 2 airplanes, as defined in the service bulletin, in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990. After the effective date of this AD, the inspection shall be accomplished in accordance with paragraph (b) of this AD.

(1) If no crack is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months, until the inspection required by paragraph (b) or (c) of this AD, as applicable, is accomplished.

(2) If any crack is found, prior to further flight, repair in accordance with FAA-approved data, and repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months, until the inspection required by paragraph (b) or (c) of this AD, as applicable, is accomplished.

(b) For airplanes on which a frame stiffener and a skin doubler have not been installed during production or in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990: Perform a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from nacelle station (NAC STA) 230 to NAC STA 300 on the inboard and outboard struts of Group 1 airplanes and on the outboard struts of Group 2 airplanes, in accordance with the inspection procedures described in Figure 3 of Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990; at the time specified in paragraph (b)(1) or (b)(2) of this AD, whichever occurs later. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (a) of this AD.

(1) Prior to the accumulation of 10,000 total hours time-in-service on the airplane strut, or within 120 days after the effective date of this AD, whichever occurs later. Or

(2) Within 12 months after the immediately preceding inspection accomplished in accordance with paragraph (a) of this AD.

Note 1: Paragraph (b) of this AD specifies an inspection zone that is expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from NAC STA 230 to NAC STA 300.

(c) For airplanes on which a frame stiffener and a skin doubler have been installed during production or in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990: Within 120 days after the effective date of this AD, perform a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from the edge of the doubler to NAC STA 300 on the inboard and outboard struts of Group 1 airplanes and on the outboard struts of Group 2 airplanes, in accordance with the inspection procedures described in Figure 3 of Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990.

Note 2: Paragraph (c) of this AD specifies an inspection zone that is expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from the doubler edge to NAC STA 300.

(d) If no crack, heat discoloration, or wrinkle is found during the inspection required by paragraph (b) or (c) of this AD, repeat that inspection thereafter at intervals not to exceed 15 months.

(e) If any crack, heat discoloration, wrinkle, or previously stop-drilled crack is found during the inspection required by paragraph (b) or (c) of this AD, prior to further flight, repair using either the small skin doubler and frame stiffener or the large skin doubler and frame stiffener specified in Boeing Service Bulletin 747–54–2901, Revision 5, dated April 26, 1990, in accordance with that service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat that inspection at intervals not to exceed 15 months.

(f) Installation of a frame stiffener and a skin doubler referred to in Boeing Service Bulletin 747–54–2091 as "terminating action" does not constitute terminating action for the inspection requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–14362 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Premerger Notification and Report Form that parties to certain mergers or acquisitions are required to file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

During the fifteen years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division, has amended the premerger notification rules several times to improve the program's effectiveness and to lessen the burden of complying with the rules. The present proposed revisions to the Premerger Notification and Report Form (hereinafter "the Form") are also intended to improve the program's efficiency in insuring a prompt, thorough, initial investigation of the competitive implications of proposed acquisitions. The proposed amendments are designed to improve the premerger notification program by requiring persons to submit certain new and more up-to-date information. The proposed revisions will also reduce the burden of compliance by raising the thresholds of several items consistent with the agencies' information needs. The burden reduction proposals will decrease the amount of information that must be provided and the search costs associated with providing that information.

DATES: Comments must be received on or before July 12, 1994.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Victor L. Cohen, Attorney, or John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition, room 303, Federal Trade Commission, Washington, DC 20580 Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Each of these proposed changes to the Form is designed to improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the proposed amendments expands the coverage of the Form in a way that would affect small business. Therefore, pursuant to Section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354 (September 19, 1980), the Federal Trade Commission certifies that these proposals will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of some rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and Form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–3518. These requirements were reviewed and approved by the Office of Management and Budget (OMB Control No. 3084–0005). Because the proposed

amendments would affect the information collection requirement of the premerger notification program, the proposed amendments have been submitted to OMB for review under § 3504(h) of the Paperwork Reduction Act. These provisions are described more fully in the Notice of Application to OMB under the Paperwork Reduction Act, which also is being published in the **Federal Register** today. Comments on the Commission's submission may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Trade Commission.

Background

Section 7A of the Clayton Act ("the Act"), 15 U.S.C. 18a, as added by Sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires parties to certain acquisitions of assets or voting securities to notify the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General" or "the Department") before consummating the acquisition. The parties must then wait a certain designated period before the consummation of such acquisition. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of Section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (which are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that either agency deems to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the Act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it. The problem of unscrambling the assets after the transaction has taken place is thereby eliminated.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws.

Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt from the act's notification and waiting period requirements additional persons or transactions which are not likely to violate the antitrust laws and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

The Commission, with the concurrence of the Assistant Attorney General, promulgated implementing rules ("the rules") and a Notification and Report Form and issued an accompanying Statement of Basis and Purpose, all of which were published in the **Federal Register** of July 31, 1978, 43 FR 33450, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the Act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on ten occasions since they were first promulgated. See, 44 FR 60781 (November 21, 1979); 45 FR 14205 (March 5, 1980); 46 FR 38710 (July 29, 1981); 48 FR 34427 (July 29, 1983); 50 FR 38742 (September 24, 1985); 51 FR 10368 (March 26, 1986); 52 FR 7066 (March 6, 1987) (all of these changes included revisions in the Form); 52 FR 20058 (May 29, 1987); 54 FR 21427 (May 18, 1989) and 55 FR 31371 (August 2, 1990).

The current set of proposals to change the Form is designed to improve the program's effectiveness by requiring the submission of certain additional information that will be very useful to the agencies in the performance of their initial antitrust reviews of proposed transactions. The proposals also include several modifications that are intended to reduce the burden of completing the HSR Form consistent with the agencies' antitrust enforcement needs. The Commission invites interested persons to submit comments on the appropriateness of the proposed changes to the Form and its instructions.

Proposed Changes in the Instructions and Form

a. Transactions Subject to the Bankruptcy Code

Section 363(b) of the Bankruptcy Code, 11 U.S.C. 363(b), provides for a waiting period of ten days for transactions in which a trustee in bankruptcy files notification of a proposed acquisition as an acquired person. Since 11 U.S.C. 1107 provides that a debtor-in-possession essentially has the same powers as a trustee in bankruptcy, a debtor-in-possession also may file notification as an acquired person and thereby invoke the ten-day waiting period. Due to the very limited time provided for the initial review of such transactions, it is important that the Commission and the Department quickly and easily identify transactions to which the Bankruptcy Code provisions apply. For this reason, the Commission proposes to modify the preamble found on page one of the Form to include the question:

Is this filing being made as an acquired person by a trustee in bankruptcy or a debtor-in-possession subject to Section 363(b) of the Bankruptcy Code, 11 U.S.C. 363(b)? yes /_____/ no /_____/

b. Notification for an Acquisition That Has Taken Place

Several times each year, persons file premerger notifications for acquisitions that have been consummated prior to filing notification and observing the appropriate waiting period. Usually, such persons call the Commission's Premerger Notification Office ("PNO") promptly after discovering the violation.

Many of these violations are determined to be inadvertent, the result of simple negligence. The PNO advises persons who have consummated an acquisition in violation of the Act to file a corrective filing as soon as possible and to submit a detailed, written explanation signed by a company official explaining how the violation occurred and the steps that will be taken to ensure future compliance with the filing requirements. The letter of explanation need not accompany the corrective filing. The submission of a corrective, compliant notification will, in most instances, stop the accruing of civil penalties after the waiting period has expired.

The PNO has established procedures for processing corrective filings and conducting an informal inquiry to determine whether to refer the violation to the appropriate litigation office for investigation and a possible civil penalty action. The PNO procedures are designed to monitor persons who have violated the Act to identify repeat offenders. For this reason, it is important that filings for acquisitions that have already been consummated be easily identified and assigned to the persons who monitor and process such violations. Sometimes, persons who file corrective filings do not identify them as pertaining to an acquisition that has already been consummated. Consequently, their filings are not always assigned to the persons who have the expertise to handle these matters. To identify corrective filings easily to ensure that they are assigned to the appropriate person for review, the Commission proposes to modify the preamble found on page one of the Form to include the question:

Is this filing being made for an acquisition that has already been consummated? yes /_____/ no /_____/

c. Transactions Subject to Foreign Governmental Regulation

To enforce their antitrust statutes, many foreign governments require, or provide for voluntary submission of, premerger notification comparable to that required by the Form. Their thresholds for notification overlap to varying degrees with those of section 7A. Accordingly, parties to a merger or acquisition may file notification with, and need clearance from, more than one sovereign authority. The potential for multiple notifications has grown because of the increase not only in merger enforcement organizations, but also in the number of transactions involving firms based in different countries and/or which do business in more than one country.

Bilateral and multilateral efforts have been undertaken to foster communication and cooperation between antitrust authorities in order to assist them in determining whether proposed acquisitions violate their respective antitrust laws and avoid conflict in enforcement of those laws. Bilateral agreements between the United States and Australia, Canada, the European Commission and Germany provide for, inter alia, timely notification of investigations which involve important interests of the signatories, sharing of non-confidential information, and, where possible, coordination of investigations. A 1986 Recommendation of the Organization for Economic Cooperation and Development (OECD) similarly provides for timely notification and information sharing among the OECD members. Further efforts toward cooperation and even convergence of premerger notification requirements have been recommended by the American Bar Association in the 1991 Report of its special Committee on International Antitrust.

Cooperation and potential coordination may be hindered by the inability of antitrust authorities to learn as early as possible of the fact of the submission of premerger notification to another jurisdiction. This deficiency is complicated by the lack of uniformity among the nations' premerger notification provisions as to the timing of the submission of notification. As a result, submission of notifications to different jurisdictions at different times often occurs.

To provide for timely alert of multiple notifications of a particular transaction in order to foster cooperation between the notified jurisdictions and thereby assist the Commission and the Department in determining whether such transaction would violate the antitrust laws, the Commission proposes to modify the preamble found on page one of the Form to require a listing of the name(s) of any foreign antitrust or competition authority that has been or will be notified of the proposed acquisition. The proposed language reads as follows:

If, to the knowledge or belief of the person filing notification, a foreign antitrust or competition authority has been or will be notified of the proposed acquisition, list the name and country or other jurisdiction of each such authority and the date notification was made or is anticipated to be made:

_____

_____

_____

d. Calculation of the Percentage of Assets in Item 3

At present, the instructions to item 3 require both the acquiring and acquired persons to state the percentage of assets, percentage of voting securities and the aggregate total dollar amount of assets and voting securities that will be held by the acquiring person as a result of the acquisition. Determining the percentage of assets held has proven to be difficult for acquiring persons because they generally are not aware of the book value of the assets or the total book value of the acquired person's assets, which is the information needed to make the required calculation. On the other hand, acquired persons can readily ascertain the percentage of their total assets being acquired. For this reason, the Commission proposes to amend item 3(a) to require only the acquired person to determine the percentage of assets of the acquired person that will be held as a result of the acquisition.

Some filing persons have expressed uncertainty regarding the information that item 3(b) requires. Item 3(b) seeks to obtain information regarding the percentage of voting securities of the issuer or issuers whose voting securities will be held as a result of the acquisition. Thus, if voting securities of more than one issuer will be held as a result of the acquisition, percentages should be provided for each issuer. The Commission proposes to add clarifying language to the instructions in item 3(b).

Accordingly, the Commission proposes to modify the instructions to item 3 to read as follows:

Assets and voting securities held as a result of the acquisition (item 3(a) to be completed by the acquired person only; items 3(b) and 3(c) to be completed by both the acquiring and acquired persons). State:

Item 3(a)—the percentage of assets of the acquired person (see § 801.12(d));

Item 3(b)—the percentage(s) of voting securities of each issuer (see § 801.12(a));

Item 3(c)—the aggregate total dollar amount of assets and voting securities of the acquired person to be held by each acquiring person as a result of the acquisition (see §§ 801.13 and 801.14).

e. Elimination of Document Identification in Item 4(a)

At present, the instructions to item 4(a) of the Form permit filing persons to merely identify documents filed with the Securities and Exchange Commission (SEC) in lieu of their actual submission as attachments to the Form when copies of the documents are not

"readily available." Fortunately, filing persons rarely use this proviso and generally submit the required SEC documents with their Forms. If filing persons failed to submit these documents, it would hinder the ability of the Commission and the Department to complete their antitrust reviews within the limited time periods provided by the act.

Accordingly, the Commission proposes to delete the following instruction presently included as the last sentence in item 4(a):

Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance.

f Submission of 4(c) Documents Prepared by or for Partners

Item 4(c) of the Form requires reporting persons to submit all studies, surveys, analyses and reports that were prepared by or for any officer or director (or individuals exercising similar functions in the case of an unincorporated entity) for the purpose of evaluating or analyzing the proposed acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or product or geographic market expansion. Item 4(c) also encompasses officers or directors of any entity included within the reporting person. See 43 FR 33450, 33525 (July 31, 1978).

Item 4(c) documents often provide valuable insights into possible product and geographic markets as well as the competitive purposes and projected competitive consequences of the proposed transaction. As such, item 4(c) documents are often essential to Commission and Department attorneys in making preliminary determinations of product and geographic markets and their initial evaluations of the potential competitive effects of a proposed acquisition. In addition, item 4(c) documents also have been very useful to the agencies in preparing requests for additional information and documentary material.

At present, the instructions to item 4(c) require the submission of documents "which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) * * *." Item 4(c) applies to all entities included within the reporting person and, thus, to partnerships. However, it has been argued that partnerships do not have item 4(c) documents because they contain no individuals exercising functions similar to officers or directors (partnership interests generally "do not entitle the owner of that interest to vote for a corporate "director" or "an individual exercising similar functions"). See 16 CFR 801.1(b), example 2, and 52 FR 20058, 20062 (May 29, 1987). The Commission believes that documents prepared by or for partners of a partnership and persons responsible for managing the affairs of a partnership are likely to contain the same types of market information found in documents prepared "by or for officers or directors" of a corporation. For this reason, the Commission proposes to amend item 4(c) to require the submission of documents prepared by or for partners of a partnership. However, the Commission is concerned about the burden that such a requirement may impose on limited partners in a limited partnership. There are often numerous limited partners in a limited partnership, and it is the Commission's understanding that limited partners are principally passive investors because, generally, they must refrain from participation in the conduct of the partnership in order to limit their liability. Uniform Limited Partnership Act (U.L.A.), section 1. Indeed, the Commission has observed that often the limited partners are pension funds, insurance companies and similar types of investors.

In contrast, general partners in a limited partnership and partners in a general partnership are normally the decisionmakers who participate in the day-to-day management of a partnership. Uniform Limited Partnership Act (U.L.A.), section 6. Consequently, they are likely to create, or have created for them, documents that meet the criteria of item 4(c). On the other hand, limited partners in a limited partnership are likely to have in their possession primarily item 4(c) documents which are also within the control of the general partners. The Commission believes that any benefit that may be derived from requiring a search for and submission of item 4(c) documents by limited partners is outweighed by the additional burden that such a requirement would impose.

Accordingly, the Commission proposes to amend item 4(c) to require the submission of documents prepared by or for general partners of a limited partnership and partners of a general partnership. These changes are contained in the proposed item 4(c) language that follows section g.

g. Submission of Documents Relating to Businesses or Products of Parties to the Transaction

The Commission and the Department have received certain types of documents in response to requests for additional information that the Commission believes would be very useful to the agencies in conducting their initial assessment of the possible competitive effects of a proposed transaction. These documents describe or analyze the businesses of, the products manufactured by or the services provided by the parties to the transaction or relate to the possible integration of operations.

In this regard, the Commission's experience with filings has demonstrated that it is sometimes difficult to identify the specific products produced by the filing persons using the information presently required by the Form. The SIC codes do not always provide the specificity needed to determine the products or services of the filing persons. As a result, the agency cleared to review the transaction may spend much of the waiting period trying to determine if the filing persons manufacture products that actually compete. The agency is then left with less time to reach conclusions about other antitrust issues, such as entry, that are necessary to determine whether the acquisition raises serious antitrust concerns. Documents that discuss or analyze the businesses, products or services of the parties to the transaction, if submitted when the filings are made, may, in some cases, obviate the need for the issuance of a request for additional information and documentary materials. Such request would otherwise be needed to resolve the competitive issues that the agency lacked the time to resolve during the initial waiting period.

To provide the agencies with additional documentary material to analyze the competitive effects of a proposed acquisition, to assist the agencies in resolving all competitive issues during the initial waiting period and, in some cases, to eliminate the need to issue a request for additional information and documentary materials, the Commission proposes to modify item 4(c) to require the submission of documents that discuss, describe or analyze (1) the businesses of, the products manufactured or the services provided by the acquiring person and the business enterprise being acquired (as represented by the assets or issuer whose voting securities are being acquired) or (2) the possible integration of the operations of the acquiring person and the business enterprise being

acquired. Documents covered by the change are limited to documents that are considered to be within the traditional criteria of item 4(c) noted above and are prepared by or for any officers or directors (or, in the case of unincorporated entities, individuals exercising similar functions or general partners of a limited partnership and partners of a general partnership) for the purpose of discussing, evaluating or analyzing the proposed acquisition.

Although the amendment expands the categories of documents that filing persons are required to submit, the Commission believes that the documents may help to clarify information that the parties report in item 7(a) concerning the SIC product code overlaps. For transactions that pose no antitrust concerns, these documents are likely to enhance the ability of the agencies to expedite their review and grant early termination of the waiting period when requested.

Accordingly, the Commission proposes to amend item 4(c) of the Form to read as follows:

Item 4(c)—All studies, surveys, analyses, or reports or documents which were prepared by or for any officer(s) or director(s) including officers or directors of any entity within the filing person (or, in the case of unincorporated entities, individuals exercising similar functions or, in the case of a limited partnership, any general partner(s) of such partnership and, in the case of a general partnership, the partners of such partnership) for the purpose of discussing, evaluating or analyzing the acquisition with respect to (i) market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets; (ii) the businesses of, products manufactured by or services provided by the acquiring person and the business enterprise being acquired (as represented by the assets or issuer whose voting securities are being acquired); or (iii) the integration of the operations of the acquiring person and the business enterprise to be acquired.

h. Submission of Solicitation Documents

Pursuant to the requirements of item 4(c), filing persons often submit a variety of documents, including offering memoranda, analyses by investment bankers and similar documents prepared by consultants and investment firms for the purpose of soliciting expressions of interest from prospective purchasers. These documents often provide detailed information on the operations and the market position of the acquired person.

On occasion, counsel for a filing person has contended that investment bankers' books or other types of offering documents prepared by third parties as general selling documents are not covered by item 4(c) because they were not prepared for the specific acquisition for which a filing is being made. This position appears to be based, in part, on the statement in the Statement of Basis and Purpose ("SBP") that the "reporting person must submit only those documents prepared in connection with the reported acquisition." 43 FR 33450, 33525 (July 31, 1978). The Commission did not intend, nor does it interpret, this language to mean that only documents prepared after the acquiror has been identified qualify as item 4(c) documents. Rather, it is the Commission's view that such documents were "prepared in connection with the reported acquisition" even though at the time of preparation the specific acquiror had not been identified. Similarly, if an acquiror is considering a number of acquisition candidates and prepares documents which analyze various aspects of competition prior to making its decision regarding which candidate(s) to pursue, those documents pertaining to the candidate(s) selected are item 4(c) documents.

Counsel for filing persons also have contended that investment bankers' books are not item 4(c) documents because it is not clear that such documents are prepared "by or for any officer(s) or director(s)." The Commission believes that such documents meet this requirement because they are usually prepared at the direction of an officer or director of the acquired person. Moreover, in the Commission's view such documents of the acquiring person qualify as 4(c) documents because they are prepared for the officers or directors—the decision-makers who will determine whether to pursue an acquisition. The fact that investment bankers' books usually are prepared by outside consultants also has no bearing on whether such documents are covered by item 4(c). As the Commission made clear in the SBP when the premerger notification rules were promulgated, item 4(c) documents include "documents prepared by any person, including consultants, for officers and directors." See 43 FR 33450, 33525 (July 31, 1978). The Commission proposes to amend item 4(c) by adding new item 4(c)(ii) which will make clear that the submission of investment bankers' books and similar documents prepared in connection with the sale of the acquired person or any portion of the acquired person is required. However, this new section is not limited to documents "prepared by or for any officer(s) or director(s)" of the acquiring or the acquired person. Documents of this type have provided valuable information to the agencies in connection with their antitrust reviews and the agencies should not be precluded from receiving these documents simply because they were not prepared expressly for officers or directors.

Accordingly, the Commission proposes to add a new subsection to item 4 to be identified as item 4(c)(ii) and to renumber item 4(c) to item 4(c)(i). Proposed item 4(c)(ii) will read as follows:

Item 4(c)(ii)—All investment bankers' books, offering memoranda, and similar documents which have been prepared by any person for the purpose of soliciting expressions of interest from prospective purchasers of the assets or entity to be acquired.

i. Submission of an Index for Item 4(c) Documents

At present, persons filing documents required by item 4 of the Form may provide an optional index for the documents submitted. An index to item 4 documents has proven to be valuable to both the Premerger Notification Office staff as well as to litigation staff in expediting their reviews of proposed acquisitions, especially when numerous documents are submitted.

In order to facilitate the review process, the Commission proposes to require the submission of an index of documents submitted in response to items 4(c)(i) and 4(c)(ii). Such indices will better enable the Commission and the Department to keep track of item 4(c) documents. They also will enable the agencies to determine whether filing parties have inadvertently omitted any documents identified as item 4(c) documents.

Accordingly, the Commission proposes to add the following language to the general instructions to item 4, amended to require the submission of an index identifying all item 4(c)(i) and 4(c)(ii) documents:

Persons filing notification must provide an index of documents being submitted pursuant to items 4(c)(i) and 4(c)(ii). With respect to each document, provide the name of the document, the date of preparation, and the name and title of the document's authors and recipients.

j. Acquisition of the Assets of an Insurance Carrier

Item 5 of the Form requires insurance carriers, i.e., persons deriving revenues in 2-digit SIC major group 63, to supply revenue information only for industries not within SIC major group 63 and instructs such persons to complete the Insurance Appendix to the Form when voting securities of an insurance carrier are to be acquired. If the proposed acquisition is not of voting securities but of assets that generate insurance revenues within 2-digit SIC major group 63, the current instructions do not require the filing person to complete either item 5 or the Insurance Appendix. To correct this omission, the Commission proposes to modify item 5 and the Insurance Appendix to require insurance carriers to complete the Insurance Appendix if the acquisition is of assets that generate insurance revenues.

Accordingly, the Commission proposes to revise item 5 and the Insurance Appendix instructions to the Form to read as follows:

Item 5—Insurance Carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63. If voting securities of an insurance carrier or assets that generate insurance revenues in 2-digit SIC major group 63 are being acquired, the filing person should complete the Insurance Appendix to this Form.

Appendix To Notification and Report Form: Insurance

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier or assets that generate insurance revenues in 2-digit SIC major group 63 are being acquired directly or indirectly.

k. Products Added

Item 5(b)(ii) of the Form requires the filing person to identify (by 7-digit SIC code or in the manner ordinarily used by such person) each product within 2-digit SIC major groups 20–39 (manufactured products) which it has added or deleted subsequent to 1987 (the current base year), indicating the year of addition or deletion and stating the total dollar revenues it derived in the most recent year for each product added. Products added by reason of mergers or acquisitions of entities are not included and are reported in items 5(a) and 5(b)(i).

Some filing persons have asserted that item 5(b)(ii) does not require the inclusion of products added, either through new product innovation or through the purchase of assets including production facilities, after the most recent year for which the filing person reports revenues in item 5(b)(iii). For example, such persons assert that if the revenues reported in item 5(b)(iii) are for calendar year 1992, then they need not report in item 5(b)(ii) any new product developed in 1993 which generated revenues under an SIC code not previously used by the filing person. This interpretation of the current language of item 5(b)(ii) would permit filing persons to omit potentially important information that is not called for elsewhere on the Form. It might allow an SIC code overlap to go unreported, as well as information about the filing person's ability to manufacture the new product.

The Commission believes that the language of item 5(b)(ii) does not permit this limited reading. However, the Commission proposes to amend item 5(b)(ii) to make explicit that all manufactured products added or deleted after the base year must be reported. The amendment will alert filing persons that they must provide the "most current information available" about their production activities to enable the agencies to better assess the competitive effects of a proposed transaction. See 43 FR 33450, 33529 (July 31, 1978).

The Commission also proposes to modify item 5(b)(ii) to clarify the procedure for reporting revenues derived during the base year by entities acquired by filing persons after the base year The current instructions to item 5 require that a filing person report in response to items 5(a)-(c) any revenues derived during the base year by an entity that the filing person later acquires by merger or acquisition. However, the instructions to item 5(b)(ii) require only the reporting of products added by merger or acquisition in item 5(b)(i), which calls for revenues by 7-digit SIC manufacturing product codes, and not item 5(a), which asks for base year revenues by 4-digit SIC manufacturing and non-manufacturing industry codes. The amendment adds language to item 5(b)(ii) to indicate that base year revenues for these added products should be included in response to both items 5(a) and 5(b)(i).

Since the present language in item 5 applies only to the acquisition of an "entity", it does not cover asset acquisitions. However, the Commission's staff has adopted the position that if an asset is acquired after the base year and is accompanied by books and records sufficient to provide responses to items 5 (a) through (c), then such responses must be provided. If such books and records do not accompany the purchased asset, then, if the asset engages in manufacturing, it must be included in the response to item 5(b)(ii) as a product added by the reporting person. The Commission is in agreement with the staff's treatment of asset acquisitions and has modified item 5 to reflect this position.

Accordingly, the Commission proposes to modify the general instructions to item 5 and item 5(b)(ii) to read as follows:

Persons filing notification should include the total dollar revenues for 1987 derived by all entities, or generated by assets (for which books and records necessary to supply such revenues are available) even if such entities or assets have become included within the person since 1987. For example, if the person filing notification acquired assets in 1989, along with the books and records necessary to supply 1987 revenues generated by the assets, it must include those revenues in Item 5(a) and, if a manufactured product, in item 5(b)(i).

Item 5(b)(ii)—Products added or deleted. Within 2-digit SIC major groups 20–39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1987, including products added after the most recent year for which period revenues are reported in the response to item 5(b)(iii). Indicate the year of addition or deletion and, for products added, state the total dollar revenues derived in the most recent year, and, for products added after the most recent year, for the time period, if any, the product has derived revenues. Also include products added by the acquisition of assets engaged in manufacturing (2-digit SIC major groups 20–39) for which books and records sufficient to provide revenues for the base year were not also acquired. Products added should be identified by the appropriate 7-digit SIC product code unless the person is unsure of the proper code, in which case the person can identify the product in the manner it ordinarily uses.

Do not include products added since 1987 by reason of the acquisition of an entity in operation in 1987 or of assets accompanied by the books and records sufficient to provide 1987 revenues for such assets. Dollar revenues derived from such products should be included in response to Items 5(a) and, if a manufactured product, 5(b)(i). However, if an entity acquired after 1987 by the person filing notification (and now included within the person) itself has added or deleted any manufactured products since 1987, these products should be listed in Item 5(b)(ii).

Products deleted by reason of dispositions of assets or voting securities since 1987 should also be listed in Item 5(b)(ii).

l. Foreign Manufactured Products

Section 803.2(c)(1) of the rules, 16 CFR 803.2(c)(1), instructs filing persons to provide information in response to items 5, 7, 8 and 9 and the Insurance Appendix "with respect to operations conducted within the United States." Areas included in the United States are defined in § 801.1(k), 16 CFR 801.1(k). Filing persons are not required to submit SIC code information on a detailed manufacturing basis for products they manufacture outside the United States even if they sell the products in the United States. For example, if a filing person manufactured a product in 1987 in Canada, imported it into the United States and sold that product at the wholesale or retail level, the filing person would report revenues derived from those sales in item 5(a) using a wholesale or retail 4-digit SIC code. The filing person would not be required to identify in either item 5(a) or item 5(b)(i) the product it manufactured in Canada using the descriptive 4-digit SIC code or the 7-digit SIC product code for manufactured products that would have been required if the product had been manufactured in the United States. Similarly, if the filing person derived revenues in the most recent year from sales of the product in the United States, the person would report those revenues in item 5(c) using the appropriate 4-digit wholesale or retail code. The filing person would not report those revenues in item 5(b)(iii) using the appropriate 5-digit SIC product class code for manufactured products as it would have if the product had been manufactured in the United States.

The 4-digit SIC wholesale and retail codes reported in items 5(a) and 5(c) do not identify the SIC manufacturing codes applicable to the products manufactured abroad that are sold by the manufacturer in the United States. Consequently, the agencies have found it very difficult, using the information presently required by the Form, to determine whether a filing person that manufactures products outside the United States but sells them in the United States may be involved in manufacturing activities similar to those of another party to the transaction.

The Commission believes that 7-digit SIC product code information concerning products manufactured outside the United States that are sold in or into the United States at the wholesale or retail level would be very helpful to the agencies in performing their initial antitrust review. This information has become more important over the last decade as foreign imports and their effect on the nation's economy have increased. For this reason, the Commission proposes to modify the Form to require filing persons to identify the 7-digit SIC product code (manufacturing industries) for each product they manufacture outside the United States and sell in the United States at wholesale or retail. Since this provision requires persons to identify codes and not report revenues, it should only impose a minimal additional burden on filing persons. The proposed revision would require filing persons to identify the 7-digit SIC product codes for such foreign manufactured products only for the most recent year.

Accordingly, the Commission proposes to add a new item 5(c)(ii) to the Form and to change the designation of present item 5(c) to 5(c)(i). New proposed item 5(c)(ii) reads as follows:

Item 5(c)(ii)—Identification of 7-digit SIC product codes for certain foreign manufactured products. Provide the 7-digit SIC product code for each product manufactured outside the United States by the person filing notification for which the person reported revenues in Item 5(c)(i). The 7-digit SIC product codes to be provided are those that the person would use to identify the products if the person had manufactured the product(s) in the United States. Revenues for such 7-digit codes need not be provided.

m. Increases in Reporting Thresholds in Items 6(b) and 6(c)

At present, item 6(b) of the Form requires the reporting person to identify shareholders holding five percent or more of the voting stock of any entity included within the reporting person (including the ultimate parent entity) having total assets of $10 million or more. For each shareholder, the reporting person must list the issuer, the class, the number and the percentage of each class of voting securities held. Item 6(c) requires the reporting person to list its minority voting stock holdings of five percent or more in any issuer having total assets of $10 million or more.

Item 6 is designed to obtain information to "alert the enforcement agencies to situations in which the potential antitrust impact of the reported transaction does not result solely or directly from the acquisition, but may arise from direct or indirect shareholder relationships between the parties to the transaction." See 43 FR 33450, 33531 (July 31, 1978). For example, items 6(b) and 6(c) may reveal situations in which "a person known to be a competitor or customer or supplier of one of the parties is also a significant shareholder of the other party, or when the acquiring party holds stock in a competitor or customer or supplier of the acquired company or vice versa." Id.

The Commission has reviewed its use of the information submitted in response to items 6(b) and (c) and has determined to propose an increase in the thresholds from five percent to ten percent. Subsection (c)(9) of the Act exempts most acquisitions of ten percent or less of an issuer's voting securities, so long as the acquisition is made solely for the purpose of investment. Although the Commission and the Department of Justice have issued requests for additional information to reporting persons who proposed to acquire less than ten percent of an issuer's voting securities, it does not appear that disclosures of stock holdings of less than ten percent by filing persons in response to items 6(b) and 6(c) of the Form have raised competitive concerns sufficient to result in the issuance of any second requests.

Increasing the reporting thresholds to ten percent is also likely to reduce significantly the compliance burden of certain filing persons, such as nonpublic and foreign firms. Generally, nonpublic and foreign firms are not required to report their holdings regularly as publicly-held companies in the United States are required to do. Consequently, such firms appear to have difficulty gathering the information needed to respond accurately to items 6(b) and 6(c) at the five percent thresholds.

Accordingly, the Commission proposes to revise items 6(b) and 6(c) of the Form to read as follows:

Item 6(b)—Shareholders of person filing notification. For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (See § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds ten percent or more of the outstanding voting securities of the class, and the number and percentage of each class of voting securities held by that person. Holders need not be listed for issuers with total assets of less than $10 million.

Item 6(c)—Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage of each class of voting securities held, and

(optional) the entity within the person filing notification which holds the securities. Holdings of less than ten percent of the outstanding voting securities of any issuer, and holdings of issuers with total assets of less than $10 million, may be omitted.

n. Reporting of 5-Digit SIC Code Overlaps

At present, item 7 of the Form requires the filing person who has knowledge or belief that it and any other party to the acquisition derived revenues in the most recent year from any of the same 4-digit SIC industry codes to list the overlapping SIC codes and to provide its description. If the transaction involves the formation of a joint venture or other corporation, the filing person must indicate the common 4-digit SIC codes in which it derives revenues and in which the joint venture will derive revenues as well as the common codes it has with other parties to the transaction. The Commission proposes to amend item 7 in two ways.

First, the Commission proposes to require filing persons to identify and provide geographic market information for overlapping 5-digit SIC product class codes as well as 4-digit SIC codes for manufacturing operations (SIC major groups 20–39). The Commission has found that many of the 4-digit SIC codes within SIC major groups 20–39 are too broad for proper product line determinations. Because many products are often included within a particular 4-digit SIC code, it is difficult to determine based on 4-digit information whether the parties to the transaction produce competing products. However, 5-digit SIC codes delineate specific product classes that are less inclusive than the 4-digit SIC codes that classify products by manufacturing industry. Modifying item 7 to include overlapping 5-digit SIC codes will provide more detailed geographic market information about a more narrowly defined class of products that the filing persons produce in common. For example, the 4-digit SIC code, 2834 - Pharmaceutical Preparations, is sub-categorized into nine different 5-digit SIC codes. Thus, for the most part, while the information received in response to item 7 has been very useful, the Commission believes that information regarding geographic markets at the 5-digit SIC code overlap level will improve the agencies' initial antitrust review.

Second, the Commission proposes to amend item 7 to require filing persons to include SIC code overlaps and geographic market information for products added and facilities that began operations after the period for which revenue information was provided in response to items 5(b)(iii) and 5(c). At present, Item 7 requires a filing person to identify overlaps from operations in which it derived revenues "in the most recent year." If a filing person interprets this language narrowly to mean only overlaps for operations in which it reported revenues in items 5(b)(iii) and 5(c) for the most recent year (for which it has compiled twelve months of revenue information), overlaps which exist due to products or facilities added after that period would not be identified. The Commission is aware of at least one instance in which a filing person failed to report geographic market information for a retail establishment it opened and from which it derived revenues after the year for which it reported revenues in item 5(c). The failure to disclose such locations in responding to item 7 compromises the agencies' ability to make a complete assessment of the potential competitive effects of a proposed acquisition. For this reason, the Commission proposes to amend item 7 to clarify that filing persons are required to report product overlap and geographic market information current to the date of filing.

In addition, consistent with the proposal described above, the Commission proposes to amend current item 7(c)(iv), which will be renumbered item 7(c)(v). This item requires filing persons to provide the street addresses, arranged by state, county and city or town, of establishments in certain industries, e.g., retail trade, for which the competitive effects in local geographic markets may be of concern. The Commission proposes to amend renumbered item 7(c)(v) to make clear that the listing of establishments must include establishments acquired or constructed since the end of the most recent year for which period revenues are reported in item 5(b)(iii).

The Commission therefore proposes to amend item 7 to require: (1) The disclosure of SIC code overlaps and geographic market information at the 5-digit product class level as well as the 4-digit industry level in SIC major groups 20–39; (2) the listing of SIC code overlaps and geographic markets resulting from products added or businesses entered into since the end of the most recent year for which revenues are reported in item 5(b)(iii) or item 5(c)(i); and (3) in newly numbered item 7(c)(v), the listing of establishments acquired or constructed since the end of the most recent year for which period revenue information was provided in response to items 5(b)(iii) and 5(c). The proposed amendments read as follows:

Item 7—If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year (and/or in the period from the end of the most recent year to the date of filing of this Notification and Report Form) from any 4-digit SIC code or, within SIC major groups 20–39 (manufacturing industries), from any 4-digit industry or 5-digit product class code in which any other person who is a party to the acquisition also derived dollar revenues in the most recent year or since the end of the most recent year (or in which a joint venture or other corporation will derive dollar revenues), then for each 4-digit (SIC code) industry and each 5-digit (SIC code) product class:

Item 7(a)—List the 4-digit (industry) and 5-digit (product class) SIC codes and the description for the industries and product classes;

Item 7(b)—List the name of each person who is a party to the acquisition who derived dollar revenues in the 4-digit industry and 5-digit product class code;

Item 7(c)(i)—For each 4-digit industry and 5-digit product class code within SIC major groups 20–39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry and 5-digit product class produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(v)—For each 4-digit industry within SIC major groups 52–61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the street address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year or since the end of the most recent year, including establishments acquired or constructed by the filing person since the end of the most recent year.

o. Submission of Geographic Market Information for Health Care Facilities

At present, item 7 does not always provide the enforcement agencies with the geographic market information needed to assess the potential anticompetitive effects of acquisitions involving health care facilities. The problem results from the use of different 4-digit SIC codes to report the revenues derived from owned versus managed health care facilities. Persons who

their revenues in item 5 under one of six different 4-digit SIC codes in industry groups 805 and 806. In contrast, persons who manage health care facilities but do not own the facility report revenues derived from their management services under 4-digit SIC code 8741—Management Services. Consequently, since filing persons use different 4-digit SIC codes to report revenues derived from owned and managed health care facilities, they are not required to identify these operations as overlaps in item 7(a). Thus, if one party to an acquisition derived revenue from the ownership and operation of a general medical hospital (4-digit SIC code 8062) in the most recent year and the other party derived revenue from the management of a general medical hospital (4-digit SIC code 8741) in the same metropolitan area, the parties would not be required to identify these operations as an overlap in item 7 or to provide geographic market information.

The Commission believes that information concerning the operation of both owned and managed health care facilities is essential to the agencies' ability to perform an initial antitrust review of health care acquisitions. As the Commission found in *Hospital Corporation of America*, 106 F.T.C. 361 (1985), *aff'd, Hospital Corporation of America* v. *Federal Trade Commission*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 481 U.S. 1038 (1987), management contracts greatly enhance the ability of a firm to coordinate behavior between its owned hospitals and the hospitals it manages, thereby increasing the likelihood of anticompetitive consequences. For this reason, the Commission held that including the management contracts to be acquired from Hospital Affiliates within Hospital Corporation of America's market shares presented a more accurate picture of HCA's post-acquisition market power.

The importance of receiving information concerning management contracts in the health care area is further supported by the fact that approximately eight percent of the nation's community hospitals are operated under management contracts, often by hospital companies that both manage hospitals for others as well as operate hospitals which they own. See American Hospital Ass'n, Guide to the Health Care Field (1992) and Hospital Statistics (1992–1993 ed.). However, geographic information for managed health care facilities is not readily available on a current basis from these or any other published sources. Thus, it is important that the enforcement agencies receive with the HSR filing overlap and geographic market information concerning health care facilities that are owned, as well as those that are managed, by the filing parties.

Accordingly, the Commission proposes to amend item 7 to require reporting persons to identify managed and owned health care operations as overlaps and to provide appropriate geographic market information. To accomplish this, the Commission proposes to add a special instruction to item 7 that will treat reporting persons that operated a health care facility under a management contract in the most recent year as having derived revenues from that facility in that facility's 4-digit SIC code. For example, if the acquiring person in a reported transaction owned and operated a general medical hospital in the most recent year and reported revenues under 4-digit SIC code 8062 and the acquired person managed a general medical hospital under a management contract in the most recent year, the parties would be required to identify in item 7(a) an overlap in 4-digit SIC code 8062. In addition, each person would be required to provide, in response to renumbered item 7(c)(v), the street address, arranged by state, county and city or town, for each general medical hospital it owned or managed. This special instruction will apply only to establishments listed within SIC industry group 805, Nursing and Personal Care Facilities, and SIC industry group 806, Hospitals. Accordingly, the Commission proposes to add the following language to the instructions to item 7.

For purposes of Item 7, a person that operates, under a management contract an establishment included within SIC industry group 805, Nursing and Personal Care Facilities, or within industry group 806, Hospitals, shall be deemed to derive revenues from that establishment in the establishment's 4-digit SIC code, whether or not the person is entitled to share in the establishment's revenue, or is otherwise compensated for its management services. An establishment is deemed to be operated under a management contract by a person if that person has been delegated by another person, or governmental unit, the contractual authority and responsibility to administer or supervise the operations of all, or substantially all, of the establishment, whether or not the operator is subject to the supervision of that or any other person or unit.

p. Submission of County Geographic Market Information

Item 7(c)(ii) of the Form requires filing persons to identify the states in which they derive revenues for overlapping 4-digit SIC codes within major groups 01–17 (agriculture, forestry, fishing, mining, construction and transportation industries) and 40–49 (communications, electric, gas and sanitary services). Based on the agencies' review of past transactions in these industries, the Commission has determined that the agencies need more detailed geographic market information for the communications industry (major group 48), which includes cable television services. Many franchises and licenses in the communications industry are issued on a local (county or city) basis rather than on a state-wide basis. Comparison of county services will provide information as to whether competition exists or is likely to exist in this industry. Submission of county information will help the agencies in determining the possible competitive effects of a proposed transaction within the limited time provided by the act.

Accordingly, the Commission proposes that county as well as state information be provided by filing persons whenever a 4-digit SIC code within 2-digit major group 48 has been identified as an SIC code overlap in response to item 7(a) of the Form. To accomplish this, the Commission proposes that item 7(c)(ii) be changed to exclude SIC major group 48 and that (1) a new item 7(c)(iii) be added to the Form to require the filing person to identify the counties and states in which it derived revenues for 4-digit SIC codes in major group 48; and (2) present items 7(c)(iii), 7(c)(iv), 7(c)(v) and 7(c)(vi) be renumbered, respectively, 7(c)(iv), 7(c)(v), 7(c)(vi) and 7(c)(vii). The proposed modification of item 7(c)(ii) and the proposed new item 7(c)(iii) read as follows:

Item 7(c)(ii)—For each 4-digit industry within SIC major groups 01–17, 40–47 and 49 (agriculture, forestry and fishing, mining, construction, transportation, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the person filing notification conducts such operations;

Item 7(c)(iii)—For each 4-digit industry within SIC major group 48 (communications) listed in Item 7(a) above, list the states and the counties within such states in which the person filing notification conducts such operations or, if the person filing notification conducts operations in all

counties within a state, the identity of such states.

q. Increase in Reporting Threshold for Vendor-Vendee Relationships

At present, item 8 of the Form requires filing persons that are also vendees to provide certain information if the acquiring and the acquired persons maintained a vendor-vendee relationship during the most recent year with respect to any manufactured product that the vendee either resells, consumes in, or incorporates into, the manufacture of a product. If the proposed acquisition involves the formation of a joint venture or other corporation, item 8 requires each person forming the entity to identify any manufactured product it purchased from any other such person which will be supplied to the joint venture or other corporation. If the aggregate annual sales of the manufactured product do not exceed $1 million, the filing person need not list the product in item 8. The intended purpose of item 8 is to "identify certain instances in which a reported acquisition may result in vertical foreclosure or an increase in vertical integration in an industry." See 43 FR 33450, 33533 (July 31, 1978).

The Commission is aware that the $1 million threshold can make complying with item 8 burdensome. Responding can be particularly difficult for a large firm without a centralized accounting system that tracks the sales and purchases of each of its many divisions and subsidiaries. Consequently, such a firm may need to undertake a significant records check to determine whether it had sales or purchases of over $1 million of product from the other person to the transaction in order to supply the data called for by item 8.

The Commission proposes to increase the threshold in item 8 to require the reporting of vendor-vendee relationships when aggregate annual sales or purchases of a manufactured product during the most recent year exceed $5 million. In 1978, the Commission declined to raise the threshold to $5 or $10 million because it was concerned that a reporting floor higher than $1 million would exclude some highly significant vertical relationships. See 43 FR 33450, 33534 (July 31, 1978). However, the Commission's experience in reviewing filings and investigating proposed transactions in recent years has indicated that acquisitions in which either party makes product purchases from the other party under $5 million rarely, if ever, present risks of vertical foreclosure or increased vertical integration in a given industry. In addition, this threshold should simplify filing persons' reporting obligations because even large firms with numerous operations are likely to be able easily to identify customers that purchase this volume of product. Vendees that must supply the data required by item 8 also will likely know if they acquired products exceeding $5 million from a single source of supply.

Accordingly, the Commission proposes to modify item 8 of the Form to read:

Manufactured products are those within 2-digit SIC major groups 20–39. Any product purchased from the vendor in the aggregate annual amount not exceeding $5 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

r. Reporting of Prior Acquisitions

At present, item 9 requires the acquiring person to list certain prior acquisitions when both the acquiring person and the acquired issuer or the acquired assets had attributable to them revenues of $1 million or more in the most recent year in the same 4-digit SIC code. The acquiring person is required to list only prior acquisitions made within the previous five years of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

The purpose of item 9 is "to assist the agencies in identifying any prior acquisitions by the acquiring person that may suggest a pattern of acquisitions in a particular industry by that person." 43 FR 33450, 33534 (July 31, 1978). Item 9 has been useful to the agencies in monitoring competition within industries. Responses to this item have provided information relating to acquisitions for which a premerger filing was not made as well as information regarding possible violations of the Act for failure to file notification.

As stated above, item 9 currently requires information regarding prior acquisitions involving common 4-digit SIC codes in which both the acquiring person and the issuer or assets to be acquired derived revenues of $1 million or more in the most recent year. In 1987, the Commission decided not to adopt a suggestion to raise the $1 million threshold to $10 million "because the agencies sometimes find overlaps of less than $10 million in a given 4-digit SIC code to be of significance." 52 FR 7078 (March 6, 1987) The Commission explained that this is particularly true when the parties compete in small local markets and when the acquiror has a large market share. *Id.* However, based on the Commission's experience in reviewing acquisitions since 1987, the Commission has observed that acquisitions in which either party currently derives revenues of less than $5 million in the same 4-digit SIC industry code seldom present competitive concerns. Thus, information about the acquiring person's prior acquisitions involving such industries is of limited value, either in analyzing the transaction for which the acquiring person is currently filing notification, or for monitoring competition in the given industry. For this reason, the Commission proposes to raise the $1 million threshold presently found in item 9 to $5 million.

The Commission also proposes to clarify the language in item 9 which provides that "only acquisitions of more than 50 percent of the voting securities or assets of entities" need be listed. With respect to asset acquisitions, this language has been read to mean that only acquisitions of more than 50 percent of the assets of an entity need be listed. While the more than 50 percent threshold is justified for voting securities acquisitions, it appears to have no basis from an antitrust perspective as applied to assets. In many cases, filing parties often have recognized this incongruity and have included in their response to item 9 acquisitions of assets that did not constitute more than 50 percent of the acquired entity's assets; strict application of the more than 50 percent requirement to assets would permit nearly all prior acquisitions from large, multi-divisional corporations to go unreported in item 9. Accordingly, the Commission proposes to modify the instructions to item 9 to make clear that asset acquisitions are not subject to the 50 percent test.

In addition, the Commission proposes to modify the language of the "more than 50 percent" test as applied to the acquisition of voting securities to a "50 percent or more" test consistent with the Commission's definition of control of an issuer. See 16 CFR 801.1(b).

Accordingly, the Commission proposes that the instructions to item 9 be revised, in part, as follows:

Item 9—Previous acquisitions (to be completed by acquiring persons). Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $5 million or more in the most recent year and in

which either (1) the issuer to be acquired derived revenue of $5 million or more in the most recent year (or in the case of the formation of a joint venture or other corporation, where the joint venture or other corporation can be expected to derive revenues of $5 million or more), or (2) revenues of $5 million or more in the most recent year are attributable to the assets to be acquired.

For each such 4-digit industry, list all acquisitions made by the person filing notification in the five years prior to the date of filing. List only acquisitions of (1) 50 percent or more of the voting securities of an issuer which had assets or annual net sales of $10 million or more in the year prior to the acquisition or (2) acquisitions of assets valued at $10 million or more at the time of their acquisition.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–14316 Filed 6–13–94; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Registration of Manufacturers and Importers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On October 7, 1993, DEA published a notice a proposed rulemaking (NPRM) in the **Federal Register** (58 FR 52246) to amend its regulations to eliminate the mandatory administrative hearing requirement for objections to the registration of certain bulk manufacturers and importers of controlled substances. This SNPRM revises the NPRM by proposing to eliminate the hearing provision relating to bulk manufacturers altogether and leave unaltered the hearing provision relating to registration of importers.

DATES: Written comments and objections to this SNPRM must be received on or before August 15, 1994.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Diversion and Regulatory Section, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–8010.

SUPPLEMENTARY INFORMATION: On October 7, 1993, DEA published a NPRM in the **Federal Register** (58 FR 52246). The DEA proposed to amend two sections of its regulations, specifically 21 CFR 1301.43(a) and 1311.42(a), in which the Administrator is required to hold an administrative hearing on an application for registration to manufacture or import a bulk Schedule I or II controlled substance when requested to do so by any current bulk manufacturer of the substance(s) or by any other applicant for a similar registration. Because the proposals in this SNPRM differ in some respects from the NPRM, DEA encourages interested persons to file comments in response to this SNPRM even if they have already commented on the NPRM. Comments previously received under the NPRM will be considered under the SNPRM to the extent they are relevant to the changes in the SNPRM.

Section 1311.42(a)

In the NPRM, DEA proposed to remove the provision which enabled a person registered as a bulk manufacturer of a controlled substance or applicant thereof to request a hearing on the application of an importer of that controlled substance. As several commentators argued, the proposed amendment to 21 CFR 1311.42, cannot be reconciled with the hearing provisions of 21 U.S.C. 958(i). The relevant portion of 21 U.S.C. 958(i) states: "prior to issuing a registration under this section . . . the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing." In keeping with the above requirement, 21 CFR 1311.42, allows current bulk manufacturer registrants to request an administrative hearing regarding their objections to the registration of certain importers of Schedule I and II controlled substances. With an existing statute in effect, DEA is not empowered to adopt regulations that contravene the express language of that statute. Therefore, based on the hearing provisions under 21 U.S.C. 958(i), 21 CFR 1311.42, Application for importation of Schedule I and II controlled substances, shall remain unchanged.

Section 1301.43(a)

Unlike the registration of importers, the Controlled Substances Act (21 U.S.C. 801, et seq.) does not require that current registrants be allowed to request a hearing on an application for registration as a bulk manufacturer of a controlled substance. The NPRM proposed to modify § 1301.43(a) and provide for a hearing only when "the Administrator determines that a hearing is necessary to receive factual evidence and/or expert testimony with respect to issues raised by the application or objections thereto." The SNPRM goes one step further and eliminates this hearing provision entirely. However, the Administrator would still be required to hold hearings when requested by the applicant pursuant to an order to show cause, § 1301.44, and current registrants and applicants would still be permitted to submit comments or objections concerning an application for registration. In addition, current registrants and applicants would be granted an opportunity to participate in any hearings conducted pursuant to § 1301.44.

DEA recognizes that the antecedent for this hearing provision derives from statutory acknowledgement that limiting the number of registrants may increase the capability to control diversion. The regulations clearly state, however, that the Administrator is not required to limit the number of manufacturers even if the current registrants can provide an adequate supply, as long as DEA can maintain effective controls against diversion. 21 CFR 1301.43(b). In addition, as stated in the NPRM, the Administrator has never denied an application solely on the basis of increased danger of diversion or adverse impact upon domestic competition.

DEA also agrees that current registrants and applicants should be allowed to object to an additional registration by filing comments on grounds that it would adversely affect diversion or competition in a highly regulated industry. But DEA finds that registrants and applicants have abused the mandatory hearing requirement in the past and it remains a future source of abuse where these individuals deter or delay new registrations and retaliate by opposing annual renewals.

Most important, the proposed change as provided herein does not violate statutory intent but instead comports with sound principles of substantive and procedural due process. First, eliminating the hearing requirement except when requested by the applicant after issuance of an order to show cause, supports the statutory and regulatory mandate that an applicant for registration as a bulk manufacturer shall have the burden of proof at "any hearing" that the requirements of

registration are met. See 21 CFR 1301.55. The Administrative Procedure Act (APA) which controls these matters further provides that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." See 5 U.S.C. 556(d).

Second, the proposed change eliminates the potential for multiple hearings which not only promotes judicial economy but also avoids the anomalous result of DEA conducting administrative hearings which are not dispositive of the ultimate issue of whether an applicant should be registered. For example, because DEA must issue an order to show cause whenever it takes action to deny an application, 21 U.S.C. 824(c), under the current regulation a second hearing would likely be required when DEA decided to deny an application after a hearing held pursuant to a "third-party" request. Further, this second hearing would involve many of the same issues raised in the prior proceeding.

Finally, the proposed change continues to permit current registrants and applicants to submit written comments and objections concerning an applicant's registration. There is no reason to believe that this procedure does not provide an adequate mechanism for these individuals to convey the substance and criticality of any objections or that DEA would fail to consider such evidence prior to making a final determination. Moreover, these individuals could still participate in any hearing conducted contemporaneous with an application, thereby providing an additional opportunity to present evidence.

Accordingly, the Deputy Assistant Administrator for Diversion Control is proposing to delete the hearing requirement from this regulation. The notice requirement and the opportunity to comment upon and oppose applications shall be retained, while current registrants and other applicants will retain the opportunity to participate in any hearing requested by the Applicant pursuant to an order to show cause.

The Deputy Assistant Administrator hereby certifies that the SNPRM will have no significant impact upon those entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The registrants and applicants who use, or are affected by, the hearing covered by these regulations are typically not small entities.

The proposed rule is not a significant regulatory action pursuant to Executive Order 12866 and therefore, has not been submitted to the Office of Management and Budget centralized review. This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control and security measures.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), as delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control hereby proposes that part 1301 of Title 21, Code of Federal Regulations be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.43 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1301.43 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration.

* * * * *

3. Section 1301.44 is proposed to be amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 1301.44 Certificate of registration; denial of registration.

* * * * *

(b) If a hearing is requested by an applicant for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, any person entitled to file comments or objections to the issuance of the proposed registration pursuant to § 1301.43(a) may participate in the hearing by filing a notice of appearance in accordance with § 1301.54. Notice of the hearing shall be published in the **Federal Register** and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Notice of the hearing shall contain a summary of all comments and objections filed regarding the application and shall state the time and place for the hearing, which shall not be less than 30 days after the date of publication of such notice in the **Federal Register**.

* * * * *

4. Section 1301.54 is proposed to be amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 1301.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.44(b) and desiring to do so shall, within 30 days of the date of publication of notice of the hearing in the **Federal Register**, file with the Administrator a written notice of his intention to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 fails to file a request for a hearing or a notice of appearance, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing or to participate in the hearing, unless he shows good cause for such failure.

* * * * *

5. Section 1301.55 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1301.55 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.44(b) shall have the burden of proving any propositions of fact or law asserted by him in the hearing.

* * * * *

Dated: May 26, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 94–14333 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884 and 886

[Docket No. R–94–1732; FR–2960–P–01]

RIN 2502–AG05

Drug-Related Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD regulations to authorize rent adjustments for certain privately owned Section 8 projects to combat drug-related criminal activities.

DATES: Comments due date: August 15, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: James Tahash, Director, Planning and Procedures Division, room 6280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500; telephone: (voice) (202) 708–3944 and (TDD) (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This proposed rule would amend title 24 of the Code of Federal Regulations by adding new §§ 880.609(c), 881.609(c), 883.210(c), 884.109(d), 886.112(d) and 886.312(d), which would allow HUD to grant additional rental adjustments to privately owned Section 8 projects to combat drug-related criminal activity. The proposed rule would implement section 542 of the Cranston-Gonzalez National Affordable Housing Act, which amended section 8(c)(2)(B) of the U.S. Housing Act of 1937.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

This proposed rule was listed as item 1581 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20446) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This proposed rule would have a minimal effect on small entities. It would not result in any windfall adjustments for owners because they have to substantiate to HUD the need to combat drug related crime to recoup expenses incurred.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Specifically, the requirements of this proposed rule are directed to private owners of Section 8 projects and do not impinge upon the relationship between the Federal government and State and local governments.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The proposed rule involves additional rental adjustments which would be provided to private owners of Section 8 projects. Any effect on the family would likely be indirect and insignificant.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations, parts 880, 881, 883, 884, and 886, would be amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

2. Section 880.609 would be amended by revising the section heading, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 880.609 Rent adjustments.

* * * * *

(c) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2)(i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for part 881 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

4. Section 881.609 would be amended by revising the section heading, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 881.609 Rent adjustments.

* * * * *

(c) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2)(i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for part 883 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

6. Section 883.710 would be amended by revising the section heading, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 883.710 Rent adjustments.

* * * * *

(c) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2) (i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in

the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3) (i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. The authority citation for part 884 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

8. Section 884.109 would be amended by redesignating the existing paragraph (d) as paragraph (e), and adding a new paragraph (d), to read as follows:

§ 884.109 Rent adjustments.

* * * * *

(d) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2) (i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3) (i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—SPECIAL ALLOCATIONS

9. The authority citation for part 886 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

10. Section 886.112 would be amended by redesignating the existing paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding a new paragraph (d), to read as follows:

§ 886.112 Rent adjustments.

* * * * *

(d) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2) (i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

11. Section 886.312 would be amended by redesignating the existing paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding a new paragraph (d), to read as follows:

§ 886.312 Rent adjustments.

* * * * *

(d) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security,

capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2)(i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific;

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

Dated: June 7, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–14343 Filed 6–13–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

27 CFR Part 4

[Notice No. 797; Ref: Notice No. 792]

RIN 1512–AB25

Use of the Term "Reserve" on Wine Labels (93F–033P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 792, an advance notice of proposed rulemaking, published in the **Federal Register** on March 17, 1994. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advance notice.

DATES: Written comments must be received on or before July 15, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 797.*

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1994, ATF published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** soliciting comments from the public and industry on whether the regulations should be amended to include a definition for the term "reserve" when used on wine labels (Notice No. 792; 59 FR 12566).

The comment period for Notice No. 792 was scheduled to close on June 15, 1994. Prior to the close of the comment period ATF received a request from a national trade association, the National Association of Beverage Importers, Inc. (NABI), to extend the comment period an additional 60 days. NABI, representing the companies that import 90 percent of all alcoholic beverages brought into the U.S., stated that it must coordinate the comments of its members, many of whom are foreign companies importing their products into the U.S. Additional time is needed in order to adequately analyze and communicate the impact that the ANPRM will have on NABI member companies.

In consideration of the above, ATF finds that an extension of the comment period is warranted. However, the comment period is being extended 30 days, until July 15, 1994. The Bureau believes that a comment period totaling 120 days is a sufficient amount of time for all interested parties to respond.

Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance: This notice is issued under the authority in 27 U.S.C. 205.

Signed: June 7, 1994.

Daniel R. Black,

Acting Director.

[FR Doc. 94–14381 Filed 6–13–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1926 and 1928

[Docket No. H–122]

RIN 1218–AB37

Indoor Air Quality; Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of Comment Period and Rescheduling of Public Hearing.

SUMMARY: By this document, the Occupational Safety and Health Administration (OSHA) is extending the comment period and dates for submitting notices of intention to appear, as well as hearing testimony and evidence, and is postponing the public hearing on the proposed rule on indoor air quality which was published on April 5, 1994 (59 FR 15968). The comment period was to end on June 29, 1994; public hearings were scheduled to begin on July 12, 1994. Following publication of the proposal, thirteen written requests to extend the comment period or postpone the public hearing were received. As a result of these requests, OSHA is extending the comment period to August 13, 1994.

Public hearings will be scheduled to begin on September 20, 1994.

DATES: Comments must be postmarked on or before August 13, 1994. Notices of Intention to Appear at the public hearing must be postmarked on or before August 5, 1994. Testimony and evidence to be submitted at the hearing must be postmarked by August 13, 1994. The hearing will begin at 9:30 a.m., Tuesday, September 20, 1994 in Washington, DC.

ADDRESSES: Comments are to be submitted in quadruplicate or 1 original (hard copy) and 1 disk (5–1/4 or 3–1/2) in WP 5.0, 5.1, 6.0 or Ascii to: Docket Office, Docket No. H–122, room N–2625, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–7894. Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate.

Notices of intention to appear and testimony and evidence are to be submitted in quadruplicate to: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., room N–3649, Washington, DC 20210; Telephone: (202) 219–8615.

The hearing will be held in the auditorium, of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Public Affairs, Occupational Safety and Health Administration, room N–3649, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1994, OSHA published a notice of proposed rulemaking on indoor air quality (59 FR 15968 *et seq.*). The proposal covered a broad range of issues falling into two major categories: (1) General indoor air quality as manifested in sick building syndrome and building related illnesses; and (2) environmental tobacco smoke.

Extension of the Comment Period and Re-scheduling of the Public Hearings

Thus far OSHA has receive thirteen written requests to extend the comment period or re-schedule the public hearing to a later date. These requests have been received from: Business Council on Indoor Air (Exh. 9–121), Law firm of Paul, Hastings, Janofsky, and Walker (Exh. 9–2265), National Energy Management Institute (Exh. 9–229), Barrera Associates, Inc. (Exh. 9–539), R. J. Reynolds Tobacco Company (Exh. 9–540), Clean Air Device Manufacturers Coalition (Exh. 9–1610), ICF Kaiser Environment and Energy Group (Exh. 9–1612), Philip Morris (Exh. 9–2202), Total Indoor Environmental Quality Coalition (Exh. 9–541), American Nurses Association (Exh. 9–2263), National Licensed Beverage Association (Exh. 9–2264), United Technologies Carrier (Exh. 9–1613) and United Air Specialists, Inc (Exh. 9–2288). The requesters believe that a number of factors including the amount and complexity of information relied on in the proposal, the desire of interested persons to submit extensive comments and for various trade associations to coordinate among their members justify a modest extension of time. Based on these requests, the Agency has agreed to an extension of the comment period and has re-scheduled the public hearings to allow more time for interested persons to adequately prepare their response to the OSHA proposal. OSHA's rules for participating in its rulemaking were printed in the proposal (59 FR 16034). All persons interested in participating in this proceeding are requested to review these rules in their entirety. For public convenience these procedures are summarized below.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the OSH Act, an informal public hearing will be held on the IAQ proposal in Washington, DC from September 20 through October 14, 1994. The hearing may be extended if this period is not adequate to accommodate all those filing valid notices of intention to appear at the public hearing or the hearing may be shortened if the schedule is completed earlier.

The hearing will begin at 9:30 a.m. on Tuesday, September 20, 1994 in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by August 5, 1994. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. H–122, U. S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–8615.

A notice of intention to appear may also be transmitted by facsimile to (202) 219–5986, by the same date, provided that the original and 3 copies are sent to the same address and postmarked by the due date.

Individuals with disabilities wishing to attend the hearing should contact the hearing management officer, Mr. Thomas Hall, to obtain appropriate accommodations at the hearing.

Filing of Testimony and Evidence Before the Hearing

Any party requesting to appear at the hearing or anyone who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. One copy shall not be stapled or bound and must be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and must be postmarked no later than August 13, 1994.

Each submission will be reviewed carefully in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not complied with the above requirement may be denied an opportunity to participate or may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question other witnesses. Because of the great amount of interest that the proposal has generated thus far, there may not be enough time to accommodate those individuals wishing to make short presentations who have not filed valid notices of intention to appear; however, efforts will be made to allow such short presentations.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at

the Docket Office at the address noted above.

Conduct and Nature of Hearing

The hearing will begin at 9:30 a.m. on September 20, 1994. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in nature. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentation which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings (29 CFR part 1911) and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. These rules and guidelines will be interpreted in a manner that furthers the development of a clear record. Thus, questions of relevance, procedure and participation generally will be decided so as to favor the development of the record.

The hearings will be conducted in accordance with 29 CFR part 1911. It should be noted that § 1911.4 specifies that the Assistant Secretary may, upon reasonable notice, issue alternative procedures to expedite proceedings or for other good cause. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections and comparable matters;

3. To confine the presentations to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means;

5. In the judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

6. In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

Signed at Washington, DC, this 6th day of June 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–14323 Filed 6–13–94; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–4–6351; FRL–4997–9]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision Santa Barbara County Air Pollution Control District San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from polyester resin operations. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, 2020 L Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA, 94105; Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Santa Barbara County Air Pollution Control District (SBCAPCD), Rule 349, Polyester Resin Operations; and San Diego County Air Pollution Control District (SDCAPCD), Rule 67.12, Polyester Resin Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on November 18, 1993.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Santa

Barbara and San Diego Counties. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Santa Barbara County is classified as moderate and San Diego County is classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on November 18, 1993, including the rules being acted on in this document. This document addresses EPA's proposed action for SBCAPCD's Rule 349, Polyester Resin Operations and SDCAPCD's Rule 67.12, Polyester Resin Operations. SBCAPCD adopted Rule 349 on April 27, 1993 and SDCAPCD adopted Rule 67.12 on April 6, 1993. These submitted rules were found to be complete on December 23, 1993 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for approval into the SIP.

SBCAPCD Rule 349 and SDCAPCD Rule 67.12 control VOC emissions from polyester resin operations. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some source categories, such as polyester resin operations, EPA did not publish a CTG. In such cases, the District may determine what controls are required to satisfy the RACT requirement by reviewing the operations of facilities with the affected source category. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD's Rule 67.12, Polyester Resin Operations, includes the following significant changes from the current SIP:

- A definition for exempt compounds was added and the VOC definition was revised.
- Standards for pigmented and clear gel coats were added.
- The recordkeeping section was revised to include maintenance of records for gel coats used, manufacturer's identification and VOC content of materials used.
- Several new test methods were added to correct previously identified deficiencies.

SBCAPCD's Rule 349, Polyester Resin Operations, is a new rule which was adopted to control VOC emissions from commercial and industrial polyester resin operations. Rule 349 includes:

- The use of control options.
- Requirements for spray equipment.
- Recordkeeping for resins and cleaning materials.
- The use of closed containers to store all unused materials.
- Test methods to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDCAPCD's Rule 67.12, Polyester Resin Operations and SBCAPCD's Rule 349, Polyester Resin Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SBCAPCD and SDCAPCD retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. T3Union Electric Co. v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 6, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–14419 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[NH–8–1–5894; A–1-FRL–4998–3]

Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to conditionally approve the State Implementation Plan (SIP) revision submitted by the State of New Hampshire for the purpose of establishing a small business stationary source technical and environmental compliance assistance program. The SIP revision was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act (CAA). The rationale for the conditional approval is set forth in this proposal; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environ- mental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act Amendments of 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a small business stationary source technical and environmental compliance assistance program (PROGRAM), and submit this PROGRAM as a revision to the SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of New Hampshire has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a small business assistance program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State small business ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

New Hampshire's Small Business Technical Assistance Program (SBTAP) will be located in the Department of Environmental Services (DES). The Program will require coordination with other DES programs to utilize their experience and to assess the potential cross-media impact of compliance alternatives.

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the Act. The State has met this requirement by offering a

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

proactive and reactive approach to gathering and disseminating information on compliance issues and control technologies. The State expects to use potential resources such as a technical library and an information clearinghouse. Program staff will proactively conduct workshops and presentations for potentially affected small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by stating that the SBTAP will work with small businesses to provide general engineering assistance. Pollution prevention efforts will be coordinated with the DES toxic use and waste reduction programs. SBTAP will work proactively to promote awareness of pollution prevention techniques and related issues.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement. The SBTAP will develop materials explaining regulatory and permit requirements for small business stationary sources. Program staff will identify alternative methods and technologies for compliance with specific regulations. This will involve coordination with other DES programs; other state and Federal agencies; and trade associations and professional/technical societies.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulations or standards issued under the Act. The State has met this requirement by ensuring that small business sources are aware of their rights through outreach materials and ensuring that small businesses understand their rights when individual technical assistance is provided. Additionally, Program staff will ensure that small business stationary sources receive sufficient advance notice of their rights before applicable regulations take effect. The SBTAP will follow applicable Department rules. Program policy will be to provide as much notice as is reasonable and practicable, but never less than 30 calendar days.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The SIP revision states that the Program staff will ensure that small business stationary sources receive sufficient advance notice of their obligations under the Act within 30 days or more. Additionally, the staff will develop a program of qualified auditors to provide compliance assessments for small business stationary sources. This Compliance Assessment Program will provide a source with an on-site determination of whether the facility complies with the applicable air quality regulations. Portions of section (5) of NH's January 12, 1993, SIP revision appeared to provide the State with enforcement discretion to allow small businesses an exemption from enforcement. Pursuant to EPA's request, the State submitted a letter to EPA on May 19, 1994 clarifying and revising this portion of the SIP revision. The letter deletes two portions of section (5) and explains that the portions were originally put into the January 12, 1993 SIP as examples of the type of issues that needed to be addressed, but which would not necessarily become final policies.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The SIP revision states that the SBTAP, in coordination with other Division staff will develop standardized criteria and administrative procedures for considering requests for modifications, including provisions to ensure that granting such requests will not affect the status of the federally approved SIP and is consistent with applicable requirements of the CAA. The SIP revision lists the information that will be used in developing the criteria and procedures for consideration of requests for modifications of procedures.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the ombudsman for small business stationary sources. The State has partially met this requirement by outlining the responsibilities and duties of the small business ombudsman. The small business ombudsman responsibilities will be assigned to a proposed technical assistance coordinator position. It will be the state's central position for organizing technical assistance for environmental matters. The ombudsman will serve as an advocate for small business stationary sources in investigating and resolving complaints and disputes involving air quality regulations. Other activities of the ombudsman may include reviewing SBTAP services with trade associations and small business representatives. The ombudsman will help disseminate information to small businesses and encourage small businesses to participate in the development of regulations. The ombudsman will be the key contact person for the Governor's office for referrals of complaints and problems.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has not fully met this requirement due to the lack of adequate statutory authority to establish the CAP. However, EPA expects New Hampshire to submit the legislative authority to EPA when it is passed by the New Hampshire legislature.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities for it: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three

Continued

review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements in the SIP revision by authorizing the panel to: evaluate the effectiveness of the SBTAP and the Small Business Ombudsman, and issue advisory opinions to the Air Resources Division and EPA; prepare periodic reports to EPA on the status of the SBTAP with regard to the Paper Work Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and review information for small business stationary sources to assure such information is understandable by the layperson. Additionally, the SIP revision states that the SBTAP staff will serve as the administrative staff for the panel.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

New Hampshire's SIP revision states that assistance through the SBTAP will be available to all small business stationary sources, as defined in section 507 of the CAA. No source defined as eligible under the CAA will be excluded from the program without prior consultation with EPA. The SBTAP will also be available to small businesses which need help to comply with state air quality regulations other than Federal CAA requirements.

As allowed under section 507(c)(2) of the CAA, the State program may, under specific conditions listed in the SIP revision, include as a small business stationary source for purposes of receiving assistance a source that does not meet the criteria of subparagraphs (C), (D) or (E) above, provided that the source cannot emit more than 100 tons per year of all regulated pollutants.

Additionally, the State may exclude from assistance any category or subcategory of small business stationary sources, as allowed under section 507(c)(3)(B) of the CAA, which have been determined to have sufficient financial and technical resources to meet their regulatory obligations under the CAA.

III. Proposed Action

The State of New Hampshire has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. The State expects all the elements of the PROGRAM to be fully operational by November 15, 1994.

The State needs full adequate legal authority to implement the PROGRAM before EPA can fully approve this SIP revision. Therefore, EPA is proposing to conditionally approve the New Hampshire SIP revision for the small business stationary source technical and environmental compliance assistance program, submitted on January 12, 1993 and May 19, 1994, provided that New Hampshire submits in a timely manner the additional legal authority necessary to fully implement the PROGRAM and also submits the documentation designating a state agency to house the small business ombudsman.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

EPA is proposing to conditionally approve the small business stationary source technical and environmental compliance assistance program submitted on January 12, 1993 with revisions on May 19, 1994. The two outstanding issues with this SIP revision concern New Hampshire's lack of a designated state agency to house the small business ombudsman and the lack of adequate legal authority to establish and implement the compliance advisory panel and small business ombudsman. For this reason, EPA is proposing to conditionally approve this SIP revision provided that the State meets its commitment to submit the legislative authority allowing a compliance advisory panel and small business ombudsman to be established and implemented. Additionally, the state must demonstrate through documentation which state agency will house the state small business ombudsman. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to have the program fully operational by November 15, 1994. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved small business program will also be disapproved at that time. If EPA approves the submittal, the small business program will be fully approved in its entirety and replace the conditionally approved program in the SIP.

If EPA determines that it cannot issue a final conditional approval or if the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). Pursuant to section 507(b)(3), EPA will provide for implementation of the program provisions required under section 507(a)(4) in any State that fails to submit such a program under that subsection. Therefore, EPA would have to provide for a compliance assistance program which assists small business stationary sources in determining applicable requirements and in receiving permits under the CAA.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administer for Air and Radiation. A future document will

Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

inform the general public of these tables. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, EPA is conditionally approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being proposed for conditional approval today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's conditional approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 6, 1994.

John P. DeVillars,

Regional Administrator, Region III.

[FR Doc. 94–14418 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: By Notice of Proposed Rulemaking published March 31, 1994 (59 FR 15149), as corrected by notice published April 18, 1994 (59 FR 18443), the Federal Maritime Commission proposed various charges to its passenger vessel financial responsibility requirements for nonperformance of transportation, to ensure that cruise passengers are adequately protected in the event of nonperformance. The Commission subsequently extended the comment period in response to requests from affected parties. The International Council of Cruise Lines now has requested that the comment period be extended further to June 24, 1994. The Delta Queen Steamboat Co. supports this request. The Commission has determined to grant the request.

DATES: Comments due on or before June 24, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capital St., NW., Washington, DC 20573, (202) 523–5796.

By the Commission.

Joseph C. Poling,

Secretary.

[FR Doc. 94–14353 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

Underground Storage of Gas and Hazardous Liquids

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state and local government, and the public to an open meeting on underground storage of gas and hazardous liquids. The purpose of this meeting is to gather information on the extent of current regulation, and to help determine the proper action for RSPA to take regarding federal regulation of underground storage of gas and hazardous liquids, other than in tankage.

DATES: The meeting will be held on July 20, 1994, from 9 a.m until 4 p.m., local time.

ADDRESSES: The meeting will be held in the Doubletree Hotel, Intercontinental Airport, 15747 JFK Boulevard, Houston, Texas 77032 [Telephone 713–442–8000 or 800–810–8001]. The transcript of the meeting will be available for inspection and copying in Room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Jack Willock, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–4453, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION: Approximately 1,400 liquid and 400 natural gas underground storage facilities are located in the contiguous United States. These storage facilities include aquifers, depleted oil and gas fields, and solution mined formations and salt domes. The number of gas facilities in operation is increasing rapidly [mostly in salt domes due to low cost and high gas output from storage (deliverability)]. Many facilities are not regulated by the states.

The hazards of operating such facilities include subsidence, subsurface communication between storage reservoirs, blowouts, fractures, deficient design, improper operation and maintenance, and salt flows. Any of these hazards can result in death, injury, property damage, and environmental damage. For example, 3 people died and 21 were injured in an explosion at a salt dome storage site near Brenham, Texas on April 7, 1992. The National Transportation Safety Board (NTSB) determined that the accident resulted from deficiencies in the design of the Brenham facility, the most important being the lack of a fail-safe cavern shut-down system. NTSB made a broad recommendation that RSPA develop safety requirements for underground storage of gas and highly volatile liquids.

The American Petroleum Institute (API) is developing standards for solution-mined storage caverns, Recommended Practice (RP) 1114, *Design of Solution Mined Underground Storage Facilities*, and RP 1115, *Operation of Solution Mined Underground Storage Facilities*). API anticipates publishing both standards in 1994. The American Gas Association (AGA) is developing a standard, in coordination with API, for other geologic underground facilities.

RSPA is holding a public meeting to seek information and comment from the public for consideration in determining whether rulemaking is needed and, if so, the proper regulatory action to take. Anticipated topics to be discussed by commenters at the meeting include, but are not limited to the following:

1. A description of the types of storage configurations and the problems and risks associated with each.

2. Should federal regulations be issued to address the potential hazards of underground storage of gas and hazardous liquids?

3. Would API RP 1114 and 1115 and other standards under development address the risks and should they be incorporated into federal regulations?

4. If regulations are needed, should these regulations be federal or state? Should the underground storage of both gas and hazardous liquids be regulated?

5. If regulations are needed, should the regulations cover only surface requirements: i.e., equipment, O&M and safety procedures? Or, should both surface and subsurface regulations be issued?

6. Which states have (1) authority to regulate underground storage and (2) regulations covering such storage?

Interested persons are invited to attend the meeting and present oral or written statements on the matters set for the meeting. Any person who wishes to make oral statements at the meeting should notify Daphéne Floyd (202–366–1640) before July 2, 1994, stating the time needed for the statement.

Interested parties that are not scheduled to comment will have an opportunity to comment only after approval of the meeting officer.

(49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.)

Issued in Washington, DC on June 7, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–14341 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 59, No. 113
Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-052-1]

Calgene, Inc.; Receipt of Petition for Determination of Nonregulated Status of Genetically Engineered Canola

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Calgene, Inc., seeking a determination of nonregulated status for its Laurate canola (*Brassica napus*). In accordance with our regulations, we are soliciting public comments on whether such canola presents a plant pest risk. This action is necessary to enable interested persons to advise APHIS on any plant pest issues raised by this petition.

DATES: Written comments must be received on or before August 15, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-052-1. A copy of the Calgene petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing access to this room are asked to call in advance of visiting at (202) 690-2817. To obtain a copy of the Calgene petition, contact Ms. Kay Peterson at (301) 436-7601.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Chief, Microorganisms Branch, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: On March 31, 1994, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Nonregulated Status under 7 CFR part 340" from Calgene, Inc. (Calgene), of Davis, CA. The Calgene petition seeks a determination that its Laurate canola (*Brassica napus*) is not a "regulated article" under regulations at 7 CFR part 340 (the regulations).

The Calgene petition states that Laurate canola should not be regulated by APHIS because it does not present a plant pest risk. Laurate canola has been defined by Calgene as any *Brassica napus* cultivar or progeny of a *B. napus* line containing the 12:0 ACP thioesterase gene from California bay (*Umbellularia californica*) (bay TE gene) with its associated napin promoter and napin terminator regions. The bay TE gene encodes the 12:0 ACP thioesterase enzyme. Activity of the bay TE enzyme results in the accumulation of the 12 carbon, saturated fatty acid, laurate, in the canola seed. The bay TE gene is controlled by a seed specific, napin promoter from *Brassica rapa*. Laurate canola may also contain the *kan*^{r} gene with its associated 35S promoter and *tml* 3′ terminator, the ori pRi, the left T-DNA border and right T-DNA border, a Tn*5* transposon segment, and a Lac Z′ polylinker sequence. Laurate canola has been field tested since 1992 in 16 field trials under 5 permits granted by APHIS.

Calgene states that laurate (lauric acid) is a major component of consumer products such as laundry detergent and shampoo, and that edible uses of high laurate oils include nondairy coffee whitener and whipped toppings. Current sources of laurate are coconut and palm kernel oils.

Laurate canola is currently considered a regulated article under the regulations because it contains gene sequences (vectors, promoters, and terminators) derived from plant pathogenic sources. In the process of reviewing applications for field trials with Laurate canola, APHIS determined that the vectors and other elements were disarmed and that the trials did not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of Laurate canola may be subject to regulation by the Food and Drug Administration (FDA) under the authority of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 201 *et seq.*). FDA's policy statement concerning regulation of plants derived from new plant varieties was published in the **Federal Register** on May 29, 1992 (57 FR 22984-23005).

Under § 340.6 of the regulations, any person may submit a petition to seek a determination that a particular regulated article should not be regulated by APHIS. In accordance with the regulations, this notice establishes that comments on the petition will be accepted for a period of 60 days from the date of this notice. After reviewing the data submitted by the petitioner, written comments received during the comment period, and other relevant information, APHIS will prepare a decision document on the regulatory status of Laurate canola.

Authority: 7 U.S.C. 150aa-150jj, 151-167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of June 1994.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-14413 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 94-048-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94-054-06, renewal of permit 93-090-01, issued on 06-14-93.	AgrEvo	04-28-94	Sugar beet plants genetically engineered to express tolerance to the herbicide glufosinate.	California, Illinois, North Dakota.
94-054-07, renewal of permit 93-049-02, issued on 05-04-93.	University of Idaho	04-28-94	Canola plants genetically engineered to express tolerance to the herbicide glufosinate.	Idaho.
94-055-04, renewal of permit 92-049-02, issued on 06-05-92.	InterMountain Canola	04-28-94	Canola plants genetically engineered to express resistance to the herbicide glyphosate.	Idaho.
94-055-05	DuPont Agricultural Products.	04-28-94	Canola plants genetically engineered to express altered fatty acid composition.	Idaho.
94-060-02, renewal of permit 93-074-03, issued on 07-12-93.	Upjohn Company	04-28-94	Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Georgia.
94-070-01, renewal of permit 93-165-03, issued on 09-28-93.	Betaseed, Incorporated	04-28-94	Sugar beet plants genetically engineered to express resistance to beet necrotic yellow vein virus.	California.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 8th day of June 1994.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-14411 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 94–049–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of April 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of April 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 8th day of June 1994.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–14412 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting in which the public is invited to provide information concerning the effects of the alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement on Small Forest Carnivores (furbearers).

DATES AND TIME: July 6–7, 1994, beginning at 1 p.m.

ADDRESSES: CA Owl EIS Office, 2999 Fulton Ave., Sacramento, CA 95821.

CONTACT PERSON FOR FURTHER INFORMATION: Ed Toth, EIS Team, 2999 Fulton Ave., Sacramento, CA 95821. (916) 978–4304.

SUPPLEMENTARY INFORMATION: The Forest Service is currently preparing a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is gather information concerning the effects of the alternatives being considered on small forest carnivores.

The meeting will begin with a brief overview of the DEIS and proposed alternatives. In order to have a productive and meaningful meeting the Forest Service asks that speakers focus their presentations on scientifically-based information. This meeting will not replace the public comment period on the DEIS.

Janice Gauthier,

CA OWL EIS Team Leader.

[FR Doc. 94–14355 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–11–M

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting in which the public is invited to provide information concerning the effects of the alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement on individuals or groups of wildlife vertebrate species.

DATES AND TIME: July 19–21, 1994, beginning at 9 a.m.

ADDRESSES: Fountain Suites Hotel, 321 Bercut Dr., Sacramento, CA 95814.

CONTACT PERSON FOR FURTHER INFORMATION: Ed Toth, EIS Team, 2999 Fulton Ave., Sacramento, CA 95821, (916) 978–4304.

SUPPLEMENTARY INFORMATION: The Forest Service is currently preparing a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to gather information concerning the effects of the alternatives being considered on individuals or groups of vertebrate wildlife species.

The meeting will begin with a brief overview of the DEIS and proposed alternatives. The general meeting will then divide into thirteen simultaneous meetings covering the following individuals or groups of vertebrate species: California Spotted Owls, Avian Migrant Species, Avian Cavity Nesters, Raptors, Avian Riparian/Wetland Specialists, Other Avian Specialists, Large Mammals, Small Mammals (except Small Forest Carnivores which will be the subject of a separate meeting), Bats, Anurans, Terrestrial Salamanders, Reptiles, and Fish and Aquatic Species.

In order to have a productive and meaningful meeting the Forest Service asks that participants focus their presentations on scientifically-based information. This meeting will not

replace the public comment period on the DEIS.

Janice Gauthier,

CA OWL EIS Team Leader.

[FR Doc. 94–14356 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060994E]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of emergency public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold an emergency meeting by telephone conference call on June 17, 1994, beginning at 8 a.m. (Pacific Daylight Time) to address a problem with the West Coast groundfish trawl fishery.

Public listening stations will be set up at various ports along the Washington, Oregon, and California coast.

At the April Council meeting, the Groundfish Management Team (GMT) projected that landings of several groundfish species, among these thornyheads and trawl-caught sablefish, were likely to reach their designated harvest guidelines before the end of the year. No action was taken to slow the rate of landings at that time due to uncertainty about the effects of the license limitation program, the Pacific whiting fishery, and the West Coast shrimp fishery. Since the April meeting, the landed catch of thornyheads and trawl-caught sablefish has increased substantially, and harvest guidelines are expected to be attained by August 7 (thornyheads) and August 26 (trawl-caught sablefish).

The Council will consider action to slow these rates prior to the regularly scheduled meeting of August 2–5. The GMT will report on projected landings of thornyheads and trawl-caught sablefish, and present a list of management options for the Dover sole/thornyhead/trawl-caught sablefish (DTS) complex fishery. The Council will accept comments from its advisors and the public and then adopt a management recommendation which probably will take effect July 1. The Council will review this action at its regularly scheduled meeting August 2–5.

Because of the urgent nature of this issue and the need for the Council to address the matter immediately, this **Federal Register** notice may appear after the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 9, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14462 Filed 6–9–94; 4:25 pm]

BILLING CODE 3510–22–P

[I.D. 051794A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an Enhancement Permit (P504D), and a Scientific Research Permit (P503M).

On December 16, 1993, notice was published that an application had been filed by the U.S. Army Corps of Engineers (P504D), to collect and transport juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) and juvenile Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purpose of increasing their chances of survival, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on April 1, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 895 for the above taking, subject to certain conditions set forth therein.

On January 26, 1994, notice was published (59 FR 3667) that an application had been filed by Idaho Department of Fish and Game (IDFG) to enumerate and collect length information on adult and juvenile chinook salmon in Chamberlain Creek and West Fork Chamberlain Creek as authorized by the ESA.

Notice is hereby given that on June 2, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 909 for the above taking, subject to certain conditions set forth therein.

Issuance of these permits, as required by the ESA, were based on a findings that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these permits; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: June 2, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14328 Filed 6–13–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Reopen Scoping for an Environmental Impact Statement for Proposed Facilities for Homeporting Up to Three Future Replacement Nimitz-Class Aircraft Carriers at Naval Air Station, North Island, San Diego, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to reopen scoping for an Environmental Impact Statement (EIS) for homeporting up to three future replacement NIMITZ-class aircraft carriers at Naval Air Station (NAS), North Island, San Diego, California.

Dredging requirements for the proposed project have changed since the Notice of Intent (NOI) and Public Scoping Meeting of August 17, 1993, held in Coronado, California. In August 1993, the scope of the EIS was identified

to include dredging the pier areas, the turning basin, and its approach. The purpose of this notice is to identify that the scope of the EIS will include dredging the San Diego Bay channel to a depth greater than the existing −42 feet Mean Lower Low Water (MLLW).

NIMITZ-class aircraft carriers are heavier and draw a deeper draft than the aircraft carriers currently homeported at Naval Air Station (NAS) North Island; therefore, to meet operational considerations, the San Diego Bay channel needs to be dredged to a depth greater than the existing maintained depth of −42 feet MLLW. This requirement is in addition to the dredging identified in the two previous public notices of August 1993 and March 1994.

The maximum dredge depths being considered are −50 feet MLLW for the channel between NAS North Island and Ballast Point and −55 feet MLLW for the channel south of Ballast Point. The supporting technical information for dredging the San Diego Bay channel, including dredge depths, will be included in the EIS being prepared for this project.

In providing an opportunity to comment on this change in scope, the anticipated time for having a Draft EIS available for your review and comment is early October 1994 instead of July 1994.

For more information regarding this project, please call NAS North Island Public Affairs Officer at (619) 545–8167. Please submit written comments regarding this notice no later than July 18, 1994, to: Commanding Officer, NAS North Island (Code 00B), P.O. Box 357033, San Diego, CA 92135–7033.

Dated: June 9, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14400 Filed 6–13–94; 8:45 am]

BILLING CODE 3810–AE–M

Etrema Products, Inc.; Partially Exclusive Patent

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Etrema Products, Inc., a wholly owned subsidiary of Edge Technologies, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Etrema Products, Inc., a wholly owned subsidiary of Edge Technologies, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,158,368, entitled "Magnetostrictive Transducer," and 4,375,372, entitled "Use of Cubic Rare Earth-Iron Laves Phase Intermetallic Compounds as Magnetostrictive Transducer Materials".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 9, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14401 Filed 6–13–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

[Docket No. 6450–01]

Certification of the Radiological Condition of the Granite City Site, Granite City, IL, June 1993

AGENCY: Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys of the Granite City Site in Granite City, Illinois. The property was found to contain residual quantities of radioactive material from Atomic Energy Commission (AEC) activities. Cleanup activities have occurred at this site sufficient to remediate it to Departmental guidelines.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Fiore, Director, Office of Eastern Area Programs, Office of Environmental Restoration, Mail Stop, EM–42, U.S. Department of Energy, Washington, DC 20585, (301) 903–8141.

SUPPLEMENTARY INFORMATION: The DOE Office of Environmental Restoration, Office of Eastern Area Programs (EM–42), Off-Site/Savannah River Program Division, has conducted a remedial action project at the Granite City Site in Granite City, Illinois (Parcel No. 301–001 filed in Deed/Plat Book 19–24–14, Page 22–1 in the records of Madison County, Illinois), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and clean up or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District (MED) and AEC statutory predecessors to DOE during the early years of the nation's atomic energy program. In September 1992, the Granite City Site was designated for cleanup under FUSRAP.

In the late 1950's and early 1960's, uranium metal bars (uranium-238 ingots) were x-rayed for AEC in the Betatron Building to detect metallurgical flaws. X-ray services were provided by General Steel Castings Corporation (currently Granite City Steel) under purchase orders from Mallinckrodt Chemical Works, a prime AEC contractor. Purchase orders were issued by Mallinckrodt from 1958 to 1966 on an "as required" basis.

At DOE's request, the Oak Ridge National Laboratory conducted a preliminary radiological survey in 1989 to determine whether the site met newer, stricter cleanup guidelines. The survey indicated that the site contained residual radioactive contamination from AEC activities. As a result, on September 25, 1992, the site was designated for inclusion in FUSRAP. In June 1993, Bechtel National, Inc., conducted remedial action in accordance with DOE Orders, at the Granite City Site.

Post-remedial action surveys have demonstrated, and DOE has certified, that the subject property is in compliance with DOE residual radioactive contamination criteria and standards. The standards are established to protect members of the general public and occupants of the site and to ensure that future use of the property will result in no radiological exposure above applicable guidelines. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at the Granite City Site in Granite City, Illinois, June 1993. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except Federal Holidays), in the DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies will also be available in the DOE Public Document Room, Federal Building, 200 Administration Road, Oak Ridge, Tennessee, and will be provided to the property owner and to appropriate local officials.

DOE, through the Oak Ridge Operations Office, Former Sites

Restoration Division, has issued the following statement:

Statement of Certification: Granite City Site Former AEC Operations

The U.S. DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Granite City Site (Parcel No. 301–001 filed in Deed/Plat Book 19–24–14, Page 22–1 in the records of Madison County, Illinois). Based on analysis of all data collected, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards. For radiological exposure resulting from past AEC subcontract activities at the site, this certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants.

Property owned by National Steel Corporation: Granite City Steel Division, 1417 State Street, Granite City, Illinois 62040.

Issued in Washington, DC, on June 7, 1994.

John E. Baublitz,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 94–14430 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Availability of Draft Strategic Plan for the Office of Energy Efficiency and Renewable Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: This notice announces the availability for public comment of a draft strategic plan for the Office of Energy Efficiency and Renewable Energy (EE). The draft strategic plan presents EE's mission and vision, goals and objectives, and strategies to achieve those goals and objectives.

DATES: Individuals wishing to present their views on the draft report should do so in writing by September 30, 1994.

ADDRESSES: A copy of the draft strategic plan is available for inspection and reproduction at the public reading room of the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The public reading room is open from 9 a.m. to 4 p.m.; you may contact reading room staff at (202) 586–6020. If you wish to have a copy of the draft report mailed to you directly, please contact Jerry Dion at the address below.

Written comments should be addressed to Jerry Dion, Office of Planning and Assessment, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., EE–72, Washington, DC 20585. Receipt of comments on diskette, formatted in WordPerfect 5.1, will facilitate the process.

FOR FURTHER INFORMATION CONTACT: Jerry Dion, Office of Planning and Assessment, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., EE–72, Washington, DC 20585, (202) 586–9470.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy is issuing this draft strategic plan for public review and comment. The plan sets forth EE's goals, objectives, and strategies for program implementation. EE will use this draft document to begin a comprehensive planning process involving stakeholders and oriented toward careful identification and thorough analysis of strategic issues. The outcome of the effort will be a final version of the strategic plan and a five-year program plan.

The draft strategic plan is divided into four sections: overview, mission and vision, goals and objectives, and EE strategy. The EE goals and objectives are aligned with those expressed in the Department of Energy's strategic plan, Fueling a Competitive Economy. The strategy section addresses EE's technology, market, and organizational strategies. A series of short appendices is also included in the draft strategic plan: situation analysis, description of EE stakeholder categories, description of EE sectors' individualized missions, and evolution of EE's strategic planning process.

Respondents are welcome to express their views on any aspect of the draft strategic plan. Areas which commenters might want to address include whether the themes and content are aligned with your assessment of EE priorities; whether there are ideas that should be added or receive special emphasis; and what issues require further analysis.

Christine A. Ervin,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 94–14429 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order by the Office of Hearings and Appeals; Week of May 16 Through May 20, 1994

During the week of May 16 through May 20, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. Part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: June 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Wells Oil Co., Tucson, AZ, LEE–0108, Reporting Requirements

Wells Oil Co. filed an Application for Exception from the provisions of the reporting requirement of Form EIA–782B. The exception request, if granted, would permit Wells Oil Co. to stop filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On May 20, 1994, the Department of Energy issued a Proposed Decision and Order

which determined that the exception request be denied.

[FR Doc. 94–14436 Filed 6–13–94; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Week of May 23 Through May 27, 1994

During the week of May 23 through May 27, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Consolidated Oil & Gas, Inc., Denver, CO LEE–0109, Reporting Requirements

Consolidated Oil & Gas, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering this request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the filing requirement. Accordingly, on May 24, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Las Energy Corporation, Winter Park, FL LEE–0113, Reporting Requirements

Las Energy Corporation (Las Energy) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Las Energy to be exempted from filing Form EIA–782B. On May 26, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 94–14437 Filed 6–13–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–070]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Armstrong Air Conditioning Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–070) granting a Waiver to Armstrong Air Conditioning Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Armstrong's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Armstrong has been granted a Waiver for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Armstrong Air Conditioning Inc. (Case No. F–070)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the

basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Armstrong filed a "Petition for Waiver," dated March 11, 1994, and the addendum of April 6, 1994, in accordance with section 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on May 3, 1994, Armstrong's petition and solicited comments, data and information respecting the petition. 59 FR 22841. Armstrong also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 20, 1994. 59 FR 22841, May 3, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with the Federal Trade Commission (FTC) concerning the Armstrong Petition. The FTC did not have any objections to the issuance of the waiver to Armstrong.

Assertions and Determinations

Armstrong's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Armstrong requests the allowance to test using a 30-second blower time delay when testing its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces. Armstrong states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an increase in AFUE of 1.2 percentage points for GUK and GCK condensing gas furnaces, and 0.8 percentage points for GUJ, GCJ, and GHJ non-condensing gas furnaces, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Armstrong indicates that it is unable to take advantage of any of these exceptions for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

Since the blower controls incorporated on the Armstrong furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Armstrong GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces. Accordingly, with regard to testing the GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces, today's Decision and Order exempts Armstrong from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Armstrong Air Conditioning Inc. (Case No. F–070) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Armstrong Air Conditioning Inc., shall be permitted to test its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Armstrong Air Conditioning Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces manufactured by Armstrong Air Conditioning Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the Armstrong Air Conditioning Inc. on April 20, 1994. 59 FR 22841, May 3, 1994 (Case No. F–070).

Issued In Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–14431 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–071]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–071) granting a Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Rheem Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Rheem has been granted a Waiver for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

In the Matter of: Rheem Manufacturing Company. (Case No. F–071)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Rheem filed a "Petition for Waiver," dated March 23, 1994, in accordance with section 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on May 3, 1994, Rheem's petition and solicited comments, data and information respecting the petition. 59 FR 22846. Rheem also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on April 19, 1994. 59 FR 22846, May 3, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Rheem Petition. The FTC did not have any objections to the issuance of the waiver to Rheem.

Assertions and Determinations

Rheem's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Rheem requests the allowance to test using a 20-second blower time delay when testing its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Rheem states that since the 20-second delay is indicative of how these models actually operate and since such a delay results in an average increase in AFUE of 2.0 percentage points, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Rheem indicates that it is unable to take advantage of any of these exceptions for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

Since the blower controls incorporated on the Rheem furnaces are designed to impose a 20-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 20-second blower time delay when testing the Rheem GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Accordingly, with regard to testing the GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 20-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company (Case No. F–071) is hereby granted as set forth

in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Rheem Manufacturing Company, shall be permitted to test its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces manufactured by Rheem Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the Rheem Manufacturing Company on April 19, 1994. 59 FR 22846, May 3, 1994 (Case No. F–071).

Issued In Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–14434 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–068]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Bard Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–068) granting a Waiver to Bard Manufacturing Company (Bard) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Bard's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its DCC and DCL series central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Bard has been granted a Waiver for its DCC and DCL series central furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In The Matter Of: Bard Manufacturing Company. (Case No. F–068)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate

comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Bard filed a "Petition for Waiver," dated March 8, 1994, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on April 25, 1994, Bard's petition and solicited comments, data and information respecting the petition. 59 FR 19710. Bard also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 1, 1994. 59 FR 19710, April 25, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Bard Petition. The FTC did not have any objections to the issuance of the waiver to Bard.

Assertions and Determinations

Bard's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Bard requests the allowance to test using a 60-second blower time delay when testing its DCC and DCL series central furnaces. Bard states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of 0.6 to 1.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Bard indicates that it is unable to take advantage of any of these exceptions for its DCC and DCL series central furnaces.

Since the blower controls incorporated on the Bard furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Bard DCC and DCL series central furnaces. Accordingly, with regard to testing the DCC and DCL series central furnaces, today's Decision and Order exempts Bard from the existing provisions regarding blower controls and allows testing with the 60-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Bard Manufacturing Company (Case No. F–068) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Bard Manufacturing Company, shall be permitted to test its DCC and DCL series central furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t–), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Bard Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the DCC and DCL series central furnaces manufactured by Bard Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the Bard Manufacturing Company on April 1, 1994. 59 FR 19710, April 25, 1994 (Case No. F–068).

Issued in Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–14432 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–069]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to DMO Industries

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–069) granting a Waiver to DMO Industries (DMO) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting DMO's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its HDS series gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel.

Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, DMO has been granted a Waiver for its HDS series gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: DMO Industries. (Case No. F–069)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

DMO filed a "Petition for Waiver," dated March 4, 1994, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on May 3, 1994, DMO's petition and solicited comments, data and information respecting the petition. 59 FR 22844. DMO also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on April 20, 1994. 59 FR 22844, May 3, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the DMO Petition. The FTC did not have any objections to the issuance of the waiver to DMO.

Assertions and Determinations

DMO's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. DMO requests the allowance to test using a 30-second blower time delay when testing its HDS series gas furnaces. DMO states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an increase in AFUE of 2.0 percentage points for HDS series gas furnaces, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. DMO indicates that it is unable to take advantage of any of these exceptions for its HDS series gas furnaces.

Since the blower controls incorporated on the DMO furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the HDS series gas furnaces. Accordingly, with regard to testing the HDS series gas furnaces, today's Decision and Order exempts DMO from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by DMO Industries (Case No. F–069) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, DMO Industries, shall be permitted to test its HDS series gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the

highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, DMO Industries shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the HDS series gas furnaces manufactured by DMO Industries

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the DMO Industries on April 20, 1994. 59 FR 22844, May 3, 1994 (Case No. F–069).

Issued In Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–14433 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2666 Maine]

Bangor Hydro-Electric Company; Intent to File an Application for a New License

June 8, 1994.

Take notice that Bangor Hydro-Electric Company, the existing licensee for the Medway Hydroelectric Project No. 2666, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2666 was issued effective April 1, 1962, and expires March 31, 1999.

The project is located on the West Branch of the Penobscot River in Penobscot County, Maine. The principal works of the Medway Project include a 343-foot long, 20-foot high concrete gravity dam with flashboards and with an integral powerhouse containing generating units having an installed capacity of 3,440 Kw; a reservoir with a surface area of 120 acres at a normal pond elevation of 259.3 feet m.s.l.; 46-Kv transmission facilities connecting to the Medway substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 33 State Street, P.O. Box 932, Bangor, Maine 04402, telephone (207) 945–5621.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14346 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–168–016]

National Electric Associates Limited Partnership; Informational Filing

June 6, 1994.

Take notice that on April 28, 1994, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990, order in this proceeding, 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14347 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–47–007, et al.]

National Fuel Gas Supply Corporation; Compliance Filing

June 8, 1994.

Take notice that on June 3, 1994, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed Original Sheet No. 216–A; First Revised Sheet Nos. 213, 214, 215 and 216; Third Revised Sheet No. 222; and Fifth Revised Sheet No. 225, with an effective date of June 4, 1994.

National states that these tariff sheets are filed in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's May 4, 1994, order in the above-captioned proceeding. National further states that these proposed tariff sheets reflect the allocation of all of the fixed take-or-pay charges billed to it by Tennessee Gas Pipeline Company, and some of the fixed charges billed to it by CNG Transmission Corporation, on the basis of its customers' "Winter Requirements Quantities ("WRQ") determinants.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14348 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–282–000]

Paiute Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 8, 1994.

Take notice that on May 31, 1994, Paiute Pipeline Company (Paiute) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 161, with an effective date of June 1, 1994.

Paiute states that it is submitting the proposed tariff sheet in order to implement an element of a settlement agreement in principle recently reached by the active parties in Paiute's pending general rate case proceeding in Docket No. RP93–6–000. According to Paiute, as part of that resolution, the parties have agreed in principle to a realignment of the summer period billing deterimants over a period of several years, including the summer period for 1994. Paiute indicates, however, that because its customers' monthly billing determinants are treated as their contract demands, the revised billing determinants agreed to by the firm shippers for the 1994 summer period need to be filed and made effective immediately. Paiute states, therefore, that it is submitting the proposed tariff sheet to reflect the agreed-upon billing determinants to be in effect as of June 1994.

Paiute requests that the tendered tariff sheet be accepted for filing to become effective June 1, 1994.

Paiute states that copies of the filing were served upon all of Paiute's customers and interested state regulatory commissions, and upon all parties on the service list in Docket No. RP93–6–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14349 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2017 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 8, 1994.

Take notice that Southern California Edison Company, the existing licensee for the Big Creek No. 4 Hydroelectric Project No. 2017, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2017 was issued effective March 1, 1949, and expires March 1, 1999.

The project is located on the San Joaquin River in Fresno and Madera Counties, California. The principal works of the Big Creek No. 4 Project include a concrete gravity dam about 228 feet high and about 954 feet long; a reservoir of approx. 11, 275 acre-feet storage; an intake structure to a pressure tunnel about 11,275 feet long; a penstock and surge tank to a powerhouse with 84 MW installed capacity; a substation and 220-kilovolt transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, California 91770, telephone (818) 302–8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 1, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14350 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–183–001]

Southern Natural Gas Co., South Georgia Natural Gas Co.; Notice of Filing of Revised Tariff Sheets

June 8, 1994.

Take notice that on June 3, 1994, Southern Natural Gas Company (Southern) tendered for filing the tariff sheets to its FERC Gas Tariff, Original Revised Volume No. 2a listed on Exhibit A hereto, to be effective August 1, 1994. Also, South Georgia Natural Gas Company (South Georgia) tendered for filing the tariff sheets to its FERC Gas Tariff, Original Volume No. 2 listed on Exhibit B hereto, to be effective August 1, 1994.

Southern and South Georgia state that the purpose of this filing is to revise the Rate Schedules applicable to the offsystem storage service they provide through use of storage facilities and services rendered by ANR Pipeline Company and ANR Storage Company. The changes to the Rate Schedules on the tariff sheets filed reflect the elimination of the requirement that the customers purchase the gas to be injected into storage from Southern and/or South Georgia. Southern and South Georgia also request the necessary authority to implement the changes under their certificates of public convenience and necessity in Docket No. CP79–374 and Docket No. CP79–382, respectively. Such filing has been made in compliance with the Federal Energy Regulatory Commission's (Commission) order issued on May 4, 1994, in the above captioned proceeding. Southern and South Georgia have requested that the revised tariff sheets be made effective as of August 1, 1994.

Southern and South Georgia state that copies of the filing will be served upon their shippers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

Exhibit A—Southern Natural Gas Company, Docket No., RP94–183–001, June 3, 1994

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 87
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 90
First Revised Sheet No. 95
First Revised Sheet No. 96
First Revised Sheet No. 97

Exhibit B—South Georgia Natural Gas Company, Docket No., RP94–183–001, June 3, 1994

First Revised Sheet No. 13
First Revised Sheet No. 42
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 102
First Revised Sheet No. 107
First Revised Sheet No. 108
First Revised Sheet No. 109

[FR Doc. 94–14351 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–586–000]

Williams Natural Gas Co.; Notice of Request Under Blanket Authorization

June 8, 1944.

Take notice that on June 3, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–586–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a total of approximately 12 miles of 16-inch lateral pipeline, measuring, regulating and appurtenant facilities for the delivery of transportation gas to Empire

District Electric Company (Empire) at two locations in Jasper County, Missouri under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the total projected volume of delivery is estimated to be approximately 9.5 Bcf annually with a total peak day volume estimated to be 30 Mmcf. WNG further states that the estimated cost of construction is $4,315,680 which would be paid with available funds.

WNG says that this charge is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14352 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Week of May 9 Through May 13, 1994

During the week of May 9 through May 13, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Fitch Oil Company, Inc., Holly Springs, Mississippi, LEE–0101 Reporting Requirements

Fitch Oil Company, Inc., (Fitch) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Fitch to be exempted from filing Form EIA–782B. In considering the request, the DOE found that the firm was suffering a gross inequity due to the firm's personnel shortage. On May 11, 1994, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part and that Fitch be relieved of the reporting requirement from April 1994 through December 1994.

Saupe' Enterprises, Inc., Fairbanks, Alaska, LEE–0105 Reporting Requirements

Saupe' Enterprises, Inc., (Saupe') filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Saupe' to be exempted from filing Form EIA–782B. On May 11, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 94–14435 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Southwestern Power Administration

Integrated System

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension of integrated system power rates and opportunities for public review and comment.

SUMMARY: The Current Integrated System Rates were approved by the Federal Energy Regulatory Commission (FERC) on September 18, 1991, [EF91–4011–000, 56 FERC 61, 398]. These rates were effective October 1, 1990, and will expire September 30, 1994. The Administrator, Southwestern, has prepared Current and Revised 1994 Power Repayment Studies for the Integrated System which show the need for a minor rate adjustment of $726,051 (0.8 percent increase) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of plus-or-minus two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 903.23(a). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 1995.

DATES: Written comments are due on or before June 29, 1994.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7419.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an

Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which the two customers purchase the entire power output of the projects at the dams.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1994 Current Power Repayment Study (PRS) using existing system rate schedules. The Study shows the actual status of repayment through FY 1993 at $288,259,891 on a total investment of $971,634,103. The FY 1994 Revised PRS indicates the need for an increase in annual revenues of $726,051, or 0.8 percent, over and above the present annual revenues.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold, which was established in 1987, was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Integrated System's FY 1993 (last year's) PRS concluded that the annual revenues needed to be decreased by 1.1 percent. At that time, it was determined prudent to defer the decrease in accordance with the established threshold. As previously cited, the FY 1994 (this year's) PRS indicates that revenues would need to be increased by 0.8 percent, or $726,051 per year. It once again seems prudent to defer a rate adjustment in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 1995 (next year's) PRS.

On September 18, 1991, the current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis for a period that ends on September 30, 1994. In accordance with 10 CFR 903.22(h) and 903.23(a), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC. As a result of the benefits obtained by a rate adjustment deferral and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to extend the current Integrated System rate schedules for the one-year period beginning October 1, 1994, and extending through September 30, 1995.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of the Repayment Study Data Package for the Integrated System, please submit your request to: Mr. George Grisaffe, Assistant Administrator, Office of Administration and Rates, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7419.

Following review of the written comments, the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 6th day of June, 1994.

J. M. Shafer,

Administrator.

[FR Doc. 94–14438 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4998–4]

Proposed Settlement Agreement; Refrigerant Recycling Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding refrigerant recycling regulations promulgated by EPA under section 608 of the Clean Air Act. The proposed settlement agreement provides that EPA will undertake rulemaking regarding revisions to provisions of those regulations concerning the repair of leaks of refrigerant from industrial process refrigeration equipment and the identity of persons subject to the technician certification requirements of the regulations. The proposed settlement agreement provides that EPA is to propose certain revisions by September 1, 1994, and take final action on the proposal by June 1, 1995. It also provides that EPA will undertake proceedings regarding the stay of the leak repair regulations as they apply to industrial process refrigeration equipment during the pendency of the rulemaking to revise the regulations.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Jerry Ellis, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 235–5330. Written comments should be sent to Kevin W. McLean at the above address and must be submitted on or before July 14, 1994.

Dated: June 6, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–14424 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2018]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 10, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed June 29, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an

opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Redevelopment of Spectrum to Encourage Innovation in Use of New Telecommunications Technologies. (ET Docket No. 92–9).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14456 Filed 6–13–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2017]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

June 9, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed June 29, 1994. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition Requesting Changes in Certain Operator Classes in the Amateur Service. (RM–8391).

Number of Petitions Filed: 1.

Subject: Implementation of section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Number of Petitions Filed: 20.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14457 Filed 6–13–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Updated listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning section 219(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). The following is a list of financial institutions which have been placed in liquidation since publication of the last updated list on April 15, 1994 (59 FR 18122).

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION ALPHA LISTING (NAME)

Institution name, city/state	Date closed region	Reference No.
Barbary Coast National Bank, San Francisco, CA.	05/19/94, Western SC.	4609
Commercial Bank & Trust Co., Lowell, MA.	05/06/94, Northeast SC.	4608
Mechanics National Bank, Paramount, CA.	04/01/94, Western SC.	4606
NE Region Servicer-CP, East Hartford, CT.	05/20/94, Northeast SC.	3969
Superior National Bank, Kansas City, KS.	04/14/94, Midwest SC.	4607

Dated: June 7, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14342 Filed 6–13–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–11]

Trans Ocean-Pacific Forwarding, Inc., Possible Violations of Section 10(b)(1) of the Shipping Act of 1984; Order of Investigation

Trans Ocean-Pacific Forwarding, Inc. ("TOP") is a non-vessel-operating common carrier ("NVOCC") which has a tariff on file at the Federal Maritime Commission ("Commission"). TOP transports property between United States Atlantic and Pacific Coast ports and ports in the Far East, Southeast and Southwest Asia, Europe, the Mediterranean, Australia, New Zealand and Oceania.

Section 10(b)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(b)(1), prohibits a common carrier from charging, demanding, collecting or receiving greater, less or different compensation for transportation of property than the rates shown in its tariffs or service contracts. TOP appears to have violated section 10(b)(1) of the 1984 Act by transporting shipments subsequent to September 30, 1990 at rates less than the applicable rates filed in its tariff.

Now therefore it is ordered, That pursuant to sections 10, 11, and 13 of the 1984 Act, 46 U.S.C. app. 1709, 1710 and 1712, an investigation is hereby instituted to determine:

1. Whether TOP violated section 10(b)(1) of the 1984 Act by transporting shipments in connection with which it charged rates less than those filed in its tariff; and

2. Whether, in the event TOP violated section 10(b)(1) of the 1984 Act, civil penalties should be assessed against TOP and, if so, the amount of such penalties; whether a cease and desist order should be issued; or whether TOP's tariff should be suspended;

It is further ordered, That a public hearing will be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge ("ALJ") of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the ALJ in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the ALJ only after consideration has been given by the parties and the ALJ to the use of alternative forms of dispute resolution, and upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Trans Ocean-Pacific Forwarding, Inc. be named a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file

petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, shall comply with Subpart H of the Commission's Rules of Practice and Procedure, 46 CFR 502.111–119, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the ALJ shall be issued by June 9, 1995, and the final decision of the Commission shall be issued by October 9, 1995.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–14459 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1145
Name: Export Enterprises of N.Y., Inc.
Address: 580 Sylvan Ave., Englewood Cliffs, NJ 07632
Date Revoked: April 22, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1747
Name: Surface Air International, Inc.
Address: 20 Vesey Street, New York, NY 10007
Date Revoked: April 22, 1994
Reason: Surrendered license voluntarily.

License Number: 3293
Name: Ace Pool Car, Inc. dba A.P.C. International, Inc.
Address: 317 W. Lake Street, Northlake, IL 60164
Date Revoked: April 28, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3513
Name: Metro Forwarding, Inc.
Address: 8600 SW 161st Terrace, Miami, FL 33157
Date Revoked: April 28, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1350
Name: N.J. Defonte Co., Inc.
Address: 225 Broadway, New York, NY 10007
Date Revoked: April 29, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1557
Name: Ted I. Uwahori, Inc.
Address: 1930 West 154th Street, Gardena, CA 90249
Date Revoked: May 1, 1994
Reason: Surrendered license voluntarily.

License Number: 2379
Name: Fabian Forwarding Company, Inc.
Address: P.O. Box 1910, Hawthorne, CA 90251
Date Revoked: May 1, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2
Name: Barbara Alger dba W. R. Alger Company
Address: 6308 Lark Street, Metairie, LA 70003
Date Revoked: May 5, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2361
Name: I.S.C. Transport, Ltd.
Address: 71–08 51st Ave., Woodside, NY 11377
Date Revoked: May 5, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2845
Name: Cobalt, Inc.
Address: 9 South Heights Drive, La Marque, TX 77568
Date Revoked: May 18, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle, Director,

Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–14354 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2561	Fontana International, Inc., 2569 N.W. 74th Ave., Miami, FL 33122	May 5, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–14363 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

By Order of Revocation served September 17, 1993, the ocean freight forwarder license (FMC–1910) of Vene-Embarques, Inc., P.O. Box 521127, Miami, Florida 33152–1127, was revoked because of the licensee's failure to maintain a valid surety bond on file with the Commission. Notice of this action was published on October 4, 1993 at 58 FR 51631.

By letter dated October 14, 1993, the licensee's surety advised the Commission that it had elected to rescind its earlier request to cancel the licensee's surety coverage and that bond No. 2918 was to remain in full force and effect, with no lapse in coverage. Similarly, by letter dated October 14, 1993, Vene-Embarques, Inc. requested that its license be reissued.

Through administrative oversight, notice of the reissuance of the license of Vene-Embarques, Inc. was not published. Therefore, notice is hereby published that the license (FMC–1910) of Vene-Embarques, Inc. was reissued effective September 11, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–14364 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banco Santander, S.A., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 30, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Banco Santander, S.A., Santander, Spain; to acquire all of the voting stock of First Inter-Bancorp, and its subsidiary, Mid-Hudson Savings Bank FSB both of Fishkill, New York, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire NBC Bank, FSB, Knoxville, Tennessee, and thereby engage in operating a federally-chartered savings bank and engage in only those activities permitted to federal savings bank subsidiaries of bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y. **Comments on this application must be received by July 8, 1994.**

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14365 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

BNCCORP, Inc; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novio*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, INC., Bismarck, North Dakota; to engage *de novo* in providing management consulting to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's regulation Y. These activities will be conducted in North Dakota, South Dakota, Minnesota, and Montana.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14366 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

Ellen L. Munter; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-13643) published on page 29294 of the issue for Monday June 6, 1994.

Under the Federal Reserve Bank of Kansas City heading, the entry for Ellen L. Munter is corrected to read as follows:

1. Ellen L. Munter, and Terry R. Munter, Coleridge, Nebraska; to acquire an additional 17.04 percent of the voting shares of Gray Bancorp, Coleridge, Nebraska, for a total of 67.90 percent, and thereby indirectly acquire Coleridge National Bank, Coleridge, Nebraska.

Comments on this application must be received by June 24, 1994.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14367 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

Northwest Illinois Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted,

these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northwest Illinois Bancorp, Freeport, Illinois; to acquire 100 percent of the voting shares of Tri-State Bank and Trust Company, East Dubuque, Illinois.

In connection with this application, Applicant also proposes to acquire Tri-State Insurance Agency, Inc., East Dubuque, Illinois, and thereby engage in general insurance agency and underwriting activities pursuant to § 225.25(b)(8)(i), (ii), (iii), and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14368 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

James A. Sigmon; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. James A. Sigmon, Cumberland Gap, Tennessee; to retain 5.07 percent of the voting shares of Commercial Bancgroup, Inc., Harrogate, Tennessee, and thereby indirectly acquire Commercial Bank, Harrogate, Tennessee.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14369 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

SouthTrust of Mississippi, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 8, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust of Mississippi, Inc., Biloxi, Mississippi; to become a bank holding company by acquiring 96.38 percent of the voting shares of The Jefferson Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan, and First of America Acquisition Company, Park Ridge, Illinois; to acquire 100 percent of the voting shares of First Park Ridge Corporation, Chicago, Illinois, and thereby indirectly acquire Bank of Buffalo Grove, Buffalo Grove, Illinois, and First State Bank & Trust Company of Park Ridge, Park Ridge, Illinois. In connection with this application, First of America Acquisition Company has also applied to become a bank holding company.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Heritage Eagle Corp., Red Oak, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Red Oak, Texas.

2. Jones Partners, Ltd., La Feria, Texas; to become a bank holding company by acquiring 85.82 percent of the voting shares of Lower Rio Grande Valley Bancshares, Inc., La Feria, Texas, and thereby indirectly acquire First National Bank of La Feria, La Feria, Texas.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14370 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Rules, Regulations, Statements and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

AGENCY: Federal Trade Commission.

ACTION: Notice of application of OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3522) for clearance of information collection requirements contained in proposed changes to the Antitrust Improvements Act

Notification and Report Form that implements the notification requirement contained in the premerger notification rules and Section 7A of the Clayton Act ("the Act").

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in proposed changes to the Antitrust Improvements Act Notification and Report Form ("the Form"). Under the Clayton Act and its associated rules, certain parties contemplating acquisitions of a specified size must notify the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and wait for 30 days (or, in the case of a cash tender offer, 15 days) before consummating the transaction. The FTC has established the Form as the means for accomplishing the notification mandated by the Act. The Form provides the Commission and the Antitrust Division ("the enforcement agencies") with the information needed to make a prompt, preliminary determination of the antitrust implications of the reported transactions.

DATES: Comments on this application must be submitted on or before July 12, 1994.

ADDRESSES: Send comments to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, ATN: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB, including the application, may be obtained from the Public Reference Section, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Victor Cohen, Office of Premerger Notification, Federal Trade Commission, Washington, DC 20580 (202) 326–2849.

SUPPLEMENTARY INFORMATION:

Estimate of Information Collection Burden

For the most part, the burden of completing the Form should remain the same for the majority of respondents. The changes that require the submission of more information will be offset by the changes that require less information. The burden of reporting for a particular respondent will vary depending on factors such as the extent of the respondent's U.S. operations and whether the respondent has previously filed. Thus, while in some instances, particular respondents may have an increase or a decrease in reporting burden, overall, the reporting requirements should remain unchanged. Much of the required information is kept by filers in the ordinary course of business and burden for OMB purposes is defined to exclude any effort that would be expended regardless of any regulatory requirements. See 5 CFR 1320.7(b)(1). Thus, as indicated in the application, no "recordkeeping burden" would be imposed by the proposed changes. Further, in a "collection of information" such as this, the total burden figure fluctuates from year to year according to the number of respondents, a number which is controlled by the marketplace, not by the Commission. Thus, any increase or decrease in burden hours from previous FTC estimates is a function of the number of filers, and not a result of the proposed changes to the Form.

Based on our experience with the program's requirements and discussions with attorneys who prepare Forms for various clients, we believe that the time needed to complete the Form varies from as little as 8 hours to as much as 160 hours. On average, it appears to take about 39 hours to complete the Form. In certain circumstances, only an index or copies of filings made with a regulatory agency need be submitted (in lieu of the Form). We estimate that reporting in such cases usually requires about 2 hours.

In fiscal year 1993, 1,529 transactions were reported under the premerger notification program, resulting in a total of 2,914 filings. Of these transactions, 153 required only one party to file, because they were regulated by other federal agencies. In those cases, an index or copies of filings made to the regulatory agency were submitted in place of the Form. Using the previous estimates of 39 hours for filings that required a complete Form and 2 hours for filings that required only an index or copies of materials, we estimate the total burden of completing the Form during fiscal year 1993 to have been 107,985 hours ($2751 \times 39 = 107{,}679$) + ($153 \times 2 = 306$). Accordingly, we propose a current burden estimate of 107,985 hours.

Donald S. Clark,

Secretary.

[FR Doc. 94–14317 Filed 6–13–94; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 051694 AND 052794

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Continental Grain Company, Southland Foods, Inc. Southland Foods, Inc	94–1222	05/16/94
First Chicago Corporation, AlliedSignal Inc., AlliedSignal Inc	94–1245	05/16/94
CAMCEM, S.A. DE C.V., "Holderbank" Financiere Glaris Ltd., Holnam Inc	94–1249	05/16/94
Citicorp, Windmill Holdings Corp., Frozen Specialties, Inc	94–1256	05/16/94
Royal Dutch Petroleum Company, Agip S.p.A. Agip Petroleum Co., Inc	94–1273	05 /16/94
Inchcape plc, Hogg Group PLC Hogg Group PLC	94–1278	05/16/94
Deaconess Health Services Corporation, Metropolitan Medical Center, Metropolitan Medical Center	94–1279	05/16/94
Alco Standard Corporation, Richard J. Williams, Paul B. Williams, Inc	94–1280	05/16/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 051694 AND 052794—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
PhyCor, Inc. Lexington Clinic, P.S.C., Lexington Clinic, P.S.C	94-1281	05/16/94
Omnicom Group, Inc., Thomas L. Griffin, Griffin Bacal Inc	94-1282	05/16/94
Cardinal Health, Inc., Humiston-Keeling, Inc., Humiston-Keeling, Inc	94-1283	05/16/94
Henry L. Hillman, Metrocall, Inc., Metrocall, Inc	94-1285	05/16/94
Wasserstein Perella Partners, L.P. ("WPLP"), Bradley J. Wechsler (Mr. Wechsler) Imax Corporation	94-1287	05/16/94
Wasserstein Perella Partners, L.P., Richard L. Gelfond ("Mr. Gelfond"), Imax Corporation	94-1288	05/16/94
Owens-Corning Fiberglas Corporation, UC Industries, Inc., UC Industries, Inc	94-1291	05/16/94
Wassall PLC, General Cable Corporation, General Cable Corporation	94-1298	05/16/94
Skanska AB, Larry L. Gellerstedt, Jr., Beers, Inc	94-1305	05/16/94
Office Depot, Inc., Douglas and Mary Johnson, Midwest Carbon Company	94-1306	05/16/94
Corporate Partners, L.P., Tyco Toys, Inc. Tyco Toys, Inc	94-1307	05/16/94
Masco Corporation, Julian Rubinstein, American Shower & Bath Corporation	94-1242	05/18/94
Jordan Industries, Inc., MSB Family Trust, Pamco Printed Tape and Label Co., Inc	94-1284	05/18/94
GranCare, Inc., Lawrence H. Gratoni, Long Term Care Pharmaceutical Services Corporation	94-1293	05/18/94
Amorim Investimentos e Participacoes, SGPS, SA, Henry Fleck, Badger Cork and Manufacturing Company	94-1304	05/18/94
Michael J. Cudahy, American Home Products Corometrics Medical Systems, Inc	94-1230	05/19/94
Panhandle Eastern Corporation, George P. Mitchell, Winnie Pipeline Company	94-1255	05/19/94
Mr. Pierre Peladeau, c/o Quebecor Inc., Pentoga Partners, Arcata Corporation	94-1268	05/19/94
James R. and Carolyn L. Davis, The Edward W. Scripps Trust, United Feature Syndicate, Inc	94-1272	05/19/94
FMC Corporation, Abex Inc., Pneumo Abex Corporation assets and vs of Jetway subs	94-1320	05/19/94
General Electric Company, Preston Oil Company Limited Partnership, Preston Oil Company Limited Partnership	94-1226	05/20/94
Henry Crown and Company, Peter Kiewit Sons', Inc., Commonwealth Cellular Telephone Services, Inc	94-1267	05/20/94
Tamara L. Hughes, Storage Equities, Inc., Storage Equities, Inc	94-1290	05/20/94
BellSouth Corporation, Estate of John F. Uihlein, PLUS Cellular Corp	94-1297	05/20/94
The Atlantic Foundation, Policy Management Systems Corp., Policy Management Systems Corp	94-1302	05/20/94
The Estate of James Campbell, Carena Holdings, Inc., HNH Associates L.P	94-1317	05/20/94
Capital Cities/ABC, Inc., Mr. Gene Autry, Golden West Broadcasters	94-1318	05/20/94
Potomac Hotel Limited Partnership, California Federal Bank, FSB, Raleigh Marriott Crabtree Valley Hotel	94-1334	05/20/94
BioChem Pharma Inc., Ares-Serono S.A., Ares-Diagnostics (Holdings), B.V	94-1336	05/20/94
Westinghouse Elecrtric Corp., United Technologies Corporation, Norden Systems, Inc	94-0964	05/23/94
Idex Corporation, Hale Products, Inc., Hale Procucts, Inc	94-1321	05/23/94
Parker & Parsley Petroleum Company, Bridge Oil Limited, Bridge Oil Limited	94-1335	05/24/94
American Safety Razor Company, Robert W. Bender, Megas Beauty Care, Inc	94-1364	05/24/94
Petropinho Participacaos S.A. (a Brazilian company), The Lamson & Sessions Co. Midland Steel Products Co	94-1324	05/25/94
Household International, Inc., Hyperion Partners L.P., Cardholder Partners L.P	94-1343	05/25/94
Host Marriott Corporation, Health and Rehabilitation Properties Trust, Health and Rehabilitation Properties Trust	94-1348	05/25/94
Fresenius Atktiengesellschaft, Dr. Myron Wentz, Gull Laboratories, Inc	94-1365	05/25/94
The Loewen Group Inc., Eagan Holding Company, Inc., Eagan Holding Company, Inc	94-1292	05/26/94
Fay's Incorporated, WSR Corporation, Whitlock Corporation, National Auto Stores, Corp	94-1325	05/26/94
BCE Inc. (a Canadian Company) Glenn R. Jones, Jones Education Networks, Inc	94-1344	05/26/95
Cawsl Corp., OESI Power Corporation, OESI Power Corporation	94-1338	05/27/94
Veritus Inc. d/b/a Blue Cross of Western Pennsylvania, Connecticut Mutual Life Insurance Company, GroupAmerica Insurance Company	94-1353	05/27/94
Sage Technologies, Inc., SBC Technologies, Inc., SBC Technologies, Inc	94-1367	05/27/94
Apollo Real Estate Investment Fund, L.P., Milton Fine, Troy Park Associates Limited Partnership	94-1368	05/27/94
O. Gene Bicknell, PepsiCo, Inc., Pizza Hut, Inc	94-1370	05/27/94
PepsiCo Inc., O. Gene Bicknell, National Pizza Company	94-1371	05/27/94
Chemical Banking Corporation, Margaretten Financial Corporation, Margaretten Financial Corporation	94-1389	05/27/94
Britton Group PLC, NMC Group PLC, NMC Group PLC	94-1391	05/27/94
Outback Steakhouse, Inc., Hugh H. Connerty, Jr., San Jose Outback, Inc	94-1392	05/27/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580; (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-14318 Filed 6-13-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting of the Commission on Research Integrity

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Commission on Research Integrity, on Monday, June 20, from 9 a.m. to 5 p.m., in the Hubert H. Humphrey Building, room 800, 200 Independence Avenue SW., Washington, DC 20201. The meeting will be open to the public.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the Public Health Service Act as amended by and added to by Section 161 of the NIH Revitalization Act of 1993.

The purpose of this inaugural meeting will be to review the history of scientific misconduct issues in the Public Health Service (PHS) and to develop an approach to satisfy the mandate of the Commission. Discussion items may include but will not be limited to the definition of scientific misconduct.

conclusions of the Advisory Committee on Research Integrity, the role of the Office of Research Integrity, and related issues.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, Office of Research Integrity, Division of Policy and Education, Rockwall II, suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish the meeting agenda, the Committee charter, and a roster of the Committee members upon request. Members of the public wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a time frame for each speaker.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–14325 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[Announcement Number 459]

RIN 0905–ZA58

National Institute for Occupational Safety and Health; Health and Safety Interventions in the Construction Industry

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to create health and safety interventions in the construction industry. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669). Applicable program regulations are found in 42 CFR part 87—National Institute for Occupational Research and Demonstration Grants.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $1,400,000 will be available in FY 1994 to fund one award. The award is expected to begin on or about September 30, 1994, for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to develop and implement a nationally coordinated construction industry health and safety intervention program for the building trades.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for the activities under B., below:

A. Recipient Activities

Sector Specific Interventions

1. Develop, implement and evaluate intervention initiatives targeted at specific industry sectors and/or operations within individual sectors.

2. Identify supporting data to target interventions; develop detailed plans for the introduction of interventions based on data, including sites for pilot and support from employers and unions representing workers; evaluate the pilot; and, based on results, include detailed approach for the implementation of the effective intervention throughout the targeted industry sector in future years of the cooperative agreement.

Targeted Hazards

1. Identify hazard(s) that account for injury/illness across many industry sectors, whereby a successful intervention for a particular exposure/hazard in one sector can be applied to other industry sectors and/or operations.

2. Develop a detailed plan for the development of interventions targeting specific hazards, with a focus on the implementation and evaluation of developed, hazard specific interventions.

Innovative Pilots

1. Develop and introduce an innovative pilot in order to evaluate their effectiveness in reducing injury/illness in construction.

2. With evidence of strong industry support, pilot possible interventions that include the introduction of new technologies, tools, equipment or materials on the job site, or the introduction of control strategies targeting hazards known to cause injury/illness.

3. Based on the evaluation of pilots, include plans for the introduction of successful interventions to the construction industry.

Conference

1. Convene a national conference for the purpose of sharing information, establishing priorities, and facilitating joint approaches in the development of construction industry interventions. Participants will include construction unions, employers, owners, government, insurance and academia engaged in construction-related safety and health activities.

2. Develop a national, industry-wide intervention program for construction based on recommendations from the conference.

Economic Analysis

Conduct research efforts designed to characterize the industry economically, and demonstrate how the adoption of safety and health interventions will increase profits through the reduction of injury/illness rates.

Joint Labor/Management Initiatives

1. Recipient's program should focus on the development and implementation of joint labor/management safety and health intervention approaches and should include evaluation of joint activities, from the evaluation of joint job site safety and health committees to the development of standardized training or the success of voluntary construction industry compliance standards.

2. As part of this activity, recipient should have direct access to a joint labor/management advisory group representing industry employers and employee representatives.

Safety and Health Training

Working in cooperation with labor and management, assess the state of existing training programs and/or develop standardized safety and health training for the industry, targeting either specific trades, groups of workers or issues of concern.

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.
2. Provide collaboration for appropriate aspects of the program as requested by the grantee.
3. Assist in the dissemination of relevant health and safety information to the employers and employees involved in construction work.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the purpose of the cooperative agreement program, including the applicant's understanding of the purpose of the cooperative agreement and the relevance of the proposal to the purpose of the cooperative agreement. (20%)
2. Feasibility of meeting the proposed goals of the cooperative agreement including the proposed schedule for initiating and accomplishing each of the activities and the proposed methods for evaluating the accomplishments. (20%)
3. Strength of the program design in addressing the distinct characteristics and needs of construction workers. (30%)
4. Efficiency of resources and novelty of program including the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of the program approach. (20%)
5. Training and experience of Program Director and staff with training or experience sufficient to accomplish the proposed program. (10%)
6. The budget will be evaluated to the extent to which it is reasonable, clearly justified, and consistent with the use of funds. (Not Scored)

Executive Order 12372 Review

This program is not subject to review by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this program is 94.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 25, 1994.

1. Deadline

Applicants shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applicants

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, and business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, or by calling (404) 842–6630. Programmatic technical assistance may be obtained from Melvin L. Myers, Office of the Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop D–26, Atlanta, Georgia 30333, or by calling (404) 639–1530.

Please refer to Announcement Number 459 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: January 8, 1994.

Richard A. Lemen,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14358 Filed 6–13–94; 8:45 am]

BILLING CODE 4163–19–P

[Announcement No. 101A]

Addendum to Announcement 101; Hepatitis B Vaccination Demonstration Projects in Asian/Pacific Island Children

Introduction

The Centers for Disease Control and Prevention (CDC), through the National

Immunization Program (NIP) and the National Center for Infectious Diseases (NCID), announces the availability of supplemental funds to demonstrate the most effective method of providing hepatitis B vaccine to children 2–13 years of age in the Asian and/or Pacific Island (API) populations within the United States. This is an addendum to Program Announcement Number 101.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the section entitled WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section 317 of the Public Health Service Act (42 U.S.C. 247b), as amended. Regulations governing the implementation of this legislation are covered under 42 CFR part 51b, subparts A and B.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants for these supplemental funds are the official public health agencies who are current recipients of project grants for Preventive Health Services—Immunization.

Availability of Funds

Approximately $500,000 will be available in fiscal year (FY) 1994 to fund up to five demonstration projects through supplemental grant awards to current recipients of immunization project grants. These demonstration projects are expected to begin on or about September 30, 1994, for a twelve-month activity period within a twenty-four-month period of performance. Funding estimates may vary and are subject to change. Continuation award(s) within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of the hepatitis B vaccination (HBV) demonstration projects in API children is to demonstrate the most effective method of providing hepatitis B vaccine to children 2–13 years of age in the API populations within the United States and create a practical model to be considered for implementation nationwide.

The goals of this demonstration project are:

A. To demonstrate and compare the effectiveness (including cost-effectiveness) of different methods of providing hepatitis B vaccine to API children age 2–13 years by: (1) Conducting baseline assessments of vaccination rates (coverage), (2) developing and applying the interventions, and (3) measuring the effectiveness of the interventions.

B. To determine the factors that are most predictive of acceptance/completion and the barriers associated with non-acceptance/non-completion of the hepatitis B vaccination series in a defined target group of API children age 2–13 years.

Program Requirements

To achieve the purpose of this demonstration the successful applicant(s) will show in their proposal that they have the following:

A. A population of at least 10,000 API people within a community or geographic area that is well defined and can be approached in total with an immunization outreach program.

B. Established links to the target population (including culturally appropriate and sensitive outreach methods).

C. A history of successful completion of research projects (by the Immunization Project or through sub-contracts they have made with outside contractors) in medical or public health outreach programs within the API communities.

D. Established and effective perinatal and universal infant hepatitis B vaccination programs within the target population.

In addition, the successful applicant(s) shall be responsible for conducting the following activities:

A. Adhere to the detailed time-line provided by the recipient and approved by CDC which includes each step necessary to accomplish the recipient activities listed below.

B. Divide the target API community of at least 10,000 people in which effective fully operational perinatal hepatitis B and universal infant hepatitis B vaccination programs are being conducted into two groups—a study and comparison group—that are similar on all relevant characteristics such as demographic, geographic, social economic status, and health care profiles.

C. Follow published scientifically valid methods of sample size and power calculations, sample selection, survey design, data collection, data management and data analysis.

D. After completing the design, pretest and approval phases, conduct a baseline survey of health care providers serving the target population to measure knowledge, attitudes, practices and barriers related to hepatitis B vaccination of API children age 2–13.

E. After completing the design, pretest and approval phases, conduct the baseline household survey to measure hepatitis B vaccination coverage and knowledge, attitudes, behaviors, and barriers related to hepatitis B vaccination in the target population.

F. Effectively inform all individuals in the target group, their parents, and their medical care providers of the availability of free hepatitis B vaccinations for all API children age 2–13.

G. Provide effective culturally appropriate education on the risks of HBV infection and benefits of hepatitis B vaccination to all individuals in the target group, their parents, and their medical care providers. Through development and/or use during this demonstration project effective information materials will be available for use in similar populations throughout the United States.

H. Devise and implement an enhanced campaign in the study group within the target population. This enhancement should include outreach efforts in addition to those in the basic campaign which have been shown in the literature to be effective in the target population. The enhancement may cost more but must (1) have a strong chance of being more cost effective, and (2) be practical for other comparable immunization projects or communities to implement across the United States.

I. Properly provide the federally required hepatitis B vaccine Important Information Statement (IIS) (consent form) and obtain informed consent signatures prior to administration of each dose of hepatitis B vaccine.

J. Deliver hepatitis B vaccine to all eligible API children age 2–13 within the target communities through a network which may include public and private clinics, hospitals, and private doctors offices; Women Infant Children (WIC) and Aid to Families with

Dependent Children (AFDC) sites as well as in day care centers, pre-schools, and elementary and high school based clinics; religious and community organizations; and in-home visitation and mobile vans.

K. Utilize a computerized tracking, reminder and recall system in the entire target population but add an enhanced system of tracking, follow-up and reminder/recall in the study group, including, for example, more personnel contact and additional home visits and incentives.

L. After completing the design, pretest and approval phases, conduct post intervention Knowledge Attitudes and Practices (KAP) surveys of medical care providers in each comparison group.

M. At the conclusion of the first 12 months of funding determine within each comparison group what proportion of eligible API children age 2–13 who were not vaccinated with at least one hepatitis B vaccine dose, who received only dose 1 or doses 1 and 2, and who completed the series (dose 3).

N. At the conclusion of the first 12 months of funding, after completing the design, pretest and approval phases, conduct post intervention surveys of a sample in each comparison group of those who did not accept the hepatitis B vaccine, those that accepted dose 1 or doses 1 and 2 only, and those who accepted dose 3. The survey will be designed to provide a demographic and hepatitis B vaccination related knowledge, attitude, behavior, and barrier profile for children and parents.

CDC will provide consultation and technical assistance in planning, conducting and evaluating this project. CDC will assist with data management, analysis and writing the final reports.

Review and Evaluation Criteria

The application will be evaluated according to the following criteria:

A. The applicant's understanding of the purpose of the study and the feasibility of producing the required results.

B. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support and accessibility to an adequate number of participants in the target populations to accomplish study objectives, including culturally appropriate outreach activities.

C. The degree to which the applicants's plan is consistent with study goals and is realistic, specific, measurable and time-phased.

D. The quality of the plan of operation for conducting the proposed activities and the degree to which the plan covers the "Program Requirements" and specifies the what, who, where, how, and the timing for start and completion of each.

E. The degree to which the applicant's plan will be able to achieve the goals and the quality of the methods and instruments to be used.

F. The extent to which methods and strategies proposed are financially feasible.

G. The extent to which qualified and experienced personnel are available to carry out the proposed activities.

Site visits may be conducted before final funding decisions are made by CDC. Only the organizations with high ranking applications will be visited. During the visit, CDC staff will ensure that all necessary components for start-up of the project are in place. This meeting will be conducted by the NIP/NCID representatives with participation of the appropriate regional program consultant, project coordinator, local staff and others who may have interest in this project. Visits will be made to the local medical care providers, local public health departments, administrators of WIC and AFDC, local clinics, schools, and with community leaders. Periodic site visits will be held thereafter to monitor progress and problems.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. A current SPOC list is included in the application kit. The SPOC should send any State process recommendations to Ms. Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Room 300, Atlanta, GA 30305, no later than 60 days after the application deadline. CDC does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this project grant is 93.268, Preventive Health Services—Childhood Immunization Grants.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by the grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Application Submission and Deadline

The applicant must submit an original and two copies of the application form PHS–5161–1 (including forms SF 424 and SF 424a), on or before July 8, 1994, to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, GA 30305.

A. *Deadline:* Applications will meet the deadline if they are:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time to submit the application to an independent objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

B. *Late Applications:* Late applications will not be considered in the current funding cycle and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures,

an application package, and business management technical assistance may be obtained from Eddie L. Wilder, Senior Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6805.

Programmatic technical assistance may be obtained from Dennis O'Mara, Chief, Program Operations Section, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–52, Atlanta, GA 30333, telephone (404) 639–8215, or Edith Gary, Hepatitis B Prevention Coordinator, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–52, Atlanta, GA 30333, telephone (404) 639–8222, or Gary L. Euler, Dr.P.H., Epidemiologist, Surveillance, Investigations and Research Branch, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–61, Atlanta, GA 30333, telephone (404) 639–8257.

Announcement number 101A, "Supplemental Funds for Hepatitis B Vaccination Demonstration Projects in Asian/Pacific Island Children," must be referenced in all requests for information for these projects.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 7, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14357 Filed 6–13–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94N–0203]

Animal Drug Export; Hyaluronate Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GP Associates, Inc., has filed an application requesting approval for export of the bulk animal drug Hyaluronate Sodium Injection to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of nonfood animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that GP Associates, Inc., 22 Bucknell Dr., RD 9, Bethlehem, PA 18015, has filed application number 8584 requesting approval for the export of the bulk animal drug Hyaluronate Sodium Injection to Canada. The drug will be used for the treatment of equine carpal and fetlock joint dysfunction caused by traumatic and/or degenerate joint disease of mild to moderate severity. The application was received and filed in the Center for Veterinary Medicine on May 31, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 24, 1994 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: June 3, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–14314 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0185]

Great Lakes Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Great Lakes Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1-bromo-3-chloro-5,5-dimethylhydantoin as a slimicide for use in the manufacture of paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by July 14, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4418) has been filed by Great Lakes Chemical Corp., P.O. Box 2200, West Lafayette, IN 47906–0200. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide

for the safe use of 1-bromo-3-chloro-5,5-dimethylhydantoin (CAS Reg. No. 16079–88–2) as a slimicide in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 14, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 2, 1994.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–14371 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0099]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mycobutin™; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 15, 1994 (59 FR 18133), that announced its determination of the regulatory review period for purposes of patent extension for Mycobutin™ (rifabutin). The document was published with some mathematical errors. The document incorrectly stated, "FDA has determined that the applicable regulatory review period for Mycobutin™ is 2,831 days. Of this time, 2,124 days occurred during the testing phase of the regulatory review period, while 707 days occurred during the approval phase." It should have stated, "FDA has determined that the applicable regulatory review period for Mycobutin™ is 2,469 days. Of this time, 2,127 days occurred during the testing phase of the regulatory review period, while 342 days occurred during the approval phase." This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

In FR Doc. 94–9099, appearing on page 18133 in the **Federal Register** of April 15, 1994, the following corrections are made: On page 18134, in the first column, in the second complete paragraph, in line 3, "2,831" is corrected to read "2,469"; in line 4, "2,124" is corrected to read "2,127"; and in line 6, "707" is corrected to read "342".

Dated: June 8, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–14446 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0180]

Sigmedics, Inc.; Premarket Approval of Parastep® I System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sigmedics, Inc., Northfield, IL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Parastep® I System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 20, 1994, of the approval of the application.

DATES: Petitions for administrative review by July 14, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration,1390 Piccard Dr., Rockville, MD 20850, 301–594–1296.

SUPPLEMENTARY INFORMATION: On September 30, 1992, Sigmedics, Inc., One Northfield Plaza, suite 410, Northfield, IL 60093–3016, submitted to CDRH, an application for premarket approval of the Parastep® I System. The device is a noninvasive functional neuromuscular stimulator for ambulation and is indicated for enabling appropriately selected skeletally mature spinal cord injured patients (levels C6–T12) to stand and to attain limited ambulation and/or take steps, with assistance if required, following a prescribed period of physical therapy training in conjunction with rehabilitation management of spinal cord injury.

On August 19, 1993, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 20, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and

information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 14, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 31, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–14315 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0290]

Determination of Regulatory Review Period for Purposes of Patent Extension; Reality™ Female Condom

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Reality™ Female Condom and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well a any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Reality™ Female Condom. The Reality™ Female Condom is indicated for use to help prevent pregnancy and sexually transmitted diseases, including the human immunodeficiency virus (HIV) infection, during vaginal intercourse. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Reality™ Female Condom (U.S. Patent No. 4,735,621) from Chartex International Plc, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated August 10, 1993, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period, and that the approval of the Reality™ Female Condom represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Reality™ Female Condom is 2,017 days. Of this time, 1,460 days occurred during the testing phase of the regulatory review period, while 557 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date on which the first clinical trial on the device was begun*: October 31, 1987. The clinical trial cited by the applicant was conducted outside the United States and was not subject to FDA's requirement for an investigational device exemption (IDE) under section 520(g) of the Federal Food, Drug and Cosmetic Act (the act) nor FDA's requirement for an institutional review board (IRB) approval under section 520(g) (3) of the act. Therefore, the testing phase begins on the date the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device (21 CFR 60.22(c)(1)(iii)). The applicant has stated that the date on which the device was first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device was October 31, 1987. Because of the circumstances previously described for the clinical trial cited by the applicant, FDA has no record in which to review this date (21 CFR 60.20(c)(6)). Although FDA cannot, therefore, confirm that testing began as stated by the applicant, FDA is using this date as the start of the testing phase.

2. *The date the application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act*: October 29, 1991. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Reality™ Female Condom (PMA P910064) was initially submitted on October 29, 1991.

3. *The date the application was approved:* May 7, 1993. FDA has verified the applicant's claim that PMA P910064 was approved on May 7, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 762 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 15, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before December 12, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 8, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–14445 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: June 28, 1994.

Time of Meeting: 8 a.m. until adjournment.

Place of Meeting: Bethesda Marriott, Bethesda, MD.

Agenda: Review of Small Grant applications.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: June 6, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14442 Filed 6–13–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: July 18, 1994.

Time: 8 a.m.

Place: Sheraton City Centre, Washington, DC.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 5333 Westbard Avenue, room 307, Bethesda, MD 20892, (301) 594–7340.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14443 Filed 6–13–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3739; FR–3640–N–02]

Amendment to Notice of Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment to notice of funding availability for fiscal year (FY) 1994.

SUMMARY: This Notice informs Public Housing Agencies (PHAs) with less than 250 units under the jurisdictions of the Houston and Ft. Worth, Texas Field Offices that the deadline date for CIAP Application submission has been extended from June 20 to July 6, 1994. Applications are due on or before 3 p.m. local time on July 6, 1994. This extension does not apply to PHAs or Indian Housing Authorities under the jurisdictions of other HUD Field Offices.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1800; TDD (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The CIAP NOFA, published April 19, 1994, at 59 FR 18642, stated that of the $291,925,067 available for Public Housing CIAP, 1 percent, or $2,919,251, had been set aside to carry out goals related to pending civil rights litigation (e.g., Young v. *Cisneros*), which is subject to judicial oversight. The Department wishes to clarify that these funds will be used to fund eligible work at the 64 CIAP eligible PHAs involved in *Young* v. *Cisneros*, C.A. No. P–80–8–CA (E.D. Tex.), as well as at the CIAP eligible PHA involved in *NAACP* v. *Housing Authority of City of Commerce*, C.A. No. CA–3–88–0154–R (N.D. Tex.). In order to give the 64 PHAs involved in *Young* v. *Cisneros* additional time to include in their CIAP Applications work items proposed in their revised desegregation plans submitted to the court on February 4, 1994, the Department is extending the deadline for CIAP Application submission to all PHAs under the jurisdictions of the Houston and Fort Worth, Texas Field Offices. The application deadline is

extended from June 20, 1994 to July 6, 1994.

The 64 PHAs involved in *Young* v. *Cisneros* shall identify, in their CIAP Applications, those work items which are included in their revised desegregation plans. These 64 PHAs shall submit one CIAP Application, which may include both work items included in their revised desegregation plans and other work items not related to *Young* v. *Cisneros*.

All CIAP Applications received (including those limited to work items related to the specified civil rights cases) will be processed in accordance with the April 19, 1994 NOFA; i.e., completeness review, eligibility review, technical review (rating and ranking) and selection for Joint Review. The application from the Housing Authority of the City of Commerce will be considered for funding from the set-aside. Then the highest ranked of the 64 PHAs involved in *Young* v. *Cisneros* which apply for work items included in their revised desegregation plans will be funded from the set-aside for those items. To the extent that the set-aside cannot fund all proposed work related to the specified civil rights cases, the Field Office shall merge the rankings of any of the 65 PHAs with work items remaining unfunded from the set-aside and/or with work items not related to the set-aside, with the rankings of other PHAs to create one ranking list for purposes of Joint Review selection and funding from the Field Office's regular subassignment of CIAP funds.

Dated: June 8, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–14345 Filed 6–13–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–964–4230–05P]

Notice for Publication F–14869–B and F–14869–D Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Inalik Native Corporation for approximately 7,117.46 acres. The lands involved are in the vicinity of Little Diomede, Alaska, within T. 1 S., R. 41 W. and Tps. 1 and 2 N., Rs. 42 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 14, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–14324 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JA–P

[CO–070–94–4333–04]

Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands in Mesa County to parking for longer than thirty minutes, camping and shooting from midnight June 19, 1994 until midnight June 27, 1994.

SUMMARY: Notice is hereby given that effective midnight June 19, 1994, public lands described below are closed to: (1) "Parking for longer than 30 minutes", except at the designated Loma Boat Launch and Trailhead parking area (for river-related and trail use activities), (2) camping, and (3) shooting. This action is under the authority and requirement of 43 Code of Federal Regulations 8364 part 1 (a) and (d) and in conformance with the principles established by the National Environmental Act of 1969 and the Federal Land Policy Management Act of 1976. The restrictions affect public lands in Mesa County located in:

T. 10 S., R. 103 W., 6th PM, Secs. 3, 4, 5, 8, 9, 10;
T. 2 N., R. 3 W., Ute PM Secs. 30, 31, 32;
T. 1 N., R. 3 W., Ute PM Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16.

The closure and restriction orders are to protect persons, property, and public lands and resources. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure order may be subject to the penalties provided by 43 CFR 8360.0–7 which includes fines not to exceed $1000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the described area and at the Grand Junction District Office.

DATES: This temporary closure is in effect from midnight June 19, 1994 until midnight June 27, 1994.

ADDRESSES: Comments can be directed to the Area Manager, Bureau of Land Management, Grand Junction Resource Area, 2815 H Road, Grand Junction, CO 81506 or District Manager, Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, CO 81506.

FOR FURTHER INFORMATION CONTACT: Brian Hopkins, Outdoor Recreation Planner, Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3000.

Dated: June 1, 1994.

Catherine Robertson,

Resource Area Manager.

[FR Doc. 94–14378 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JB–P

[WY–040–04–4110–03]

Environmental Impact Statement; Enron Burly Field Enhanced Oil Recovery Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Enron's Burley Field Enhanced Oil Recovery Project Abbreviated Final Environmental Impact Statement and Record of Decision.

SUMMARY: The Bureau of Land Management announces the availability of the abbreviated Final Environmental Impact Statement and Record of Decision for Enron Burly Field Enhanced Oil Recovery Project. The proposed project area is located in Sections 18, 19, 20, and 29 of Township 28 North, Range 133 West, 6th Principal Meridian, Sublette County, Wyoming.

DATES: If an appeal is filed, your Notice of Appeal must be filed within 30 days of the date that the Environmental Protection Agency publishes their notice in the **Federal Register** to the address listed below.

ADDRESSES: If an appeal is filed, your Notice of Appeal must be filed with the State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Area Manager, Pinedale Resource Area, 432 E. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, telephone 307–367–4358.

SUPPLEMENTARY INFORMATION: This abbreviated Final Environmental Statement contains copies of substantive comments received on the draft, responses to those comments, and an errata section with specific modifications and corrections to the Draft Environmental Impact Statement in response to comments received. No rewriting or reprinting of the Draft Environmental Statement is necessary.

Given the low level of comment and the lack of controversy or opposition to the project expressed during public scoping and the comment period on the Draft Environmental Impact Statement, BLM has decided to issue the Record of Decision concurrent with the Final Environmental Impact Statement. Concurrent filing is provided for in 40 CFR 1506.10(b)(2). The Record of Decision outlines the decision and rationale including key management consideration for Enron's Burly project.

Dated: June 7, 1994.

Robert A. Bennett,

Acting State Director.

[FR Doc. 94–14359 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–22–M

[CO–920–94–4110–03; COC47428 and COC55420]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas leases COC47428 and COC55420, Rio Blanco County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from August 1, 1993, the date of termination.

No valid leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for each lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of each lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the leases effective August 1, 1993, subject to the original terms and conditions of each lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: June 1, 1994.

Joan E. Gilbert,

Land Law Examiner; Lease Closure Team.

[FR Doc. 94–14329 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JB–M

[CO–017–94–4210–05; COC–55577]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of realty action classifying lands as suitable for conveyance under the Recreation and Public Purpose Act.

SUMMARY: This correction changes the Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado published Monday, May 23, 1994 (59 FR 98; pp. 26669–26670). In column one, eleventh line up from the bottom of page 26669, "T. 2 N., T. 97 W.," is changed to "T. 2 N., R. 97 W.,"

Dated: June 6, 1994.

Robert Schneider,

Associate District Manager.

[FR Doc. 94–14386 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JB–M

[OR–942–00–4730–02; G4–179]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 4 S., R. 4 E., accepted April 14, 1994
T. 39 S., R. 18 E., accepted March 28, 1994
T. 5 N., R. 43 E., accepted May 3, 1994
T. 5 N., R. 44 E., accepted May 3, 1994
T. 15 S., R. 46 E., accepted April 29, 1994
T. 23 S., R. 3 W., accepted May 11, 1994
T. 20 S., R. 4 W., accepted May 12, 1994 (Sheets 1 & 2)
T. 21 S., R. 6 W., accepted April 29, 1994
T. 30 S., R. 6 W., accepted May 11, 1994
T. 27 S., R. 12 W., accepted April 11, 1994

Washington

T. 2 N., R. 1 E., accepted April 18, 1994

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. For further information contact: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: May 25, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–14393 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at (303) 231–3046. Comments and suggestions on the requirement should be made directly to

the Bureau Clearance Officer at the telephone number listed below, and to the Office of Management and Budget Paperwork Reduction Project, Washington, DC, 20503, telephone (202) 395–7340.

Title: Dual Accounting Information Collection.

OMB Approval Number: None.

Abstract: The Minerals Management Service (MMS), acting as agent of the United States Government, has a trust responsibility in the administration of Indian oil and gas leases. In carrying out this trust responsibility the MMS is conducting an inquiry into compliance with dual accounting requirements contained in regulations at 30 CFR 206.155. These regulations require that, where lease terms provide, accounting for comparison (dual accounting) must be performed in determining the value of natural gas production for royalty purposes. The inquiry will initially involve approximately 90 lessees and royalty payors on leases on Jicarilla Apache Tribal lands. Royalty payors on these leases will be required to submit a statement that as a matter of actual practice and company policy, company personnel did or did not each year since March 1, 1988, compare the value of unprocessed wet gas with the combined value of dry methane and extracted products derived from processing, less the allowed cost of processing, compare those values with gross proceeds accruing from disposition of production, and then select the highest of these measures as the value of production on which the company paid royalties. Upon conclusion of this inquiry, MMS may undertake further audit or other investigation of company records.

Frequency: One time only.

Description of Respondents: 90 Indian lease royalty payors.

Estimated Completion Time: 5 hours.

Estimated Responses: 90.

Estimated Burden Hours: 450.

Bureau Clearance Officer: Arthur Quintana (703) 787–1101.

Dated: May 5, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–14331 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–MR–M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0030); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart A, General.

OMB Approval Number: 1010–0030.

Abstract: The MMS proposes to amend the regulations at 30 CFR part 250 by adding a proposed section, § 250.27, Safety of operations communication. This proposed requirement will require operators of offshore production platforms to notify incoming or new personnel arriving on the platform of the status of repairs of process equipment, safety systems, or other systems that are out of service. This will require operators to maintain records of all communications.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated Completion Time: 27.41 hours (rounded).

Annual Responses: 4,605 (rounded).

Recordkeeping Hours: 8,738.

Annual Burden Hours: 13,343.

Bureau Clearance Officer: Arthur Quintana (703) 787–1239.

Dated: May 12, 1994.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 94–14330 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Change for the Management and Operation of the Presidio Child Development Center

AGENCY: National Park Service, Interior.

NOTICE: Notice of change.

In February the National Park Service released a notice of its intent to issue a Prospectus for a Concessions Contract to operate the Presidio Child Development Center located in the Golden Gate National Recreation Area. In place of the Prospectus a *Request for Proposal (RFP)* for the operation of the facility under a Special Use Permit will be released. The *RFP* will be the initial process where by organizations wishing to operate the Presidio Child Development Center will be reviewed in regards to their capabilities and prior experience. From the results of the *RFP* the National Park Service will enter into negotiations with the most qualified respondent for the management of the facility.

If you responded to our initial notice you do not need to respond to this change. We will be sending you the *RFP* in the near future.

If you did not respond to the original notice, and wish to receive a copy of the *RFP*, please write to the address below. You may also call to add your name to the list.

National Park Service, Office of the General Manager, Attention: Child Development Center RFP, Main Post, Building 102, P.O. Box 29022, Presidio of San Francisco, California 94129–0022, or call: (415) 556–1388.

Please distribute this notice to others who may have an interest in this project.

Dated: June 2, 1994.

Patricia Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 94–14313 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 4, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 29, 1994.

Beth M. Boland,

Acting Chief of Registration, National Register.

FLORIDA

Sarasota County

Thoms House, 5030 Bay Shore Rd., Sarasota, 94000666.

GEORGIA

Morgan County

Susie Agnes Hotel, Main St., Bostwick, 94000664.

Muscogee County

Werecoba—St. Elmo Historic District, Roughly bounded by 13th and Virginia Sts., 13th, 15th, 16th and Cherokee Aves. and Talbotton Rd., Muscogee. 94000665.

IDAHO

Bonner County

Priest River Experimental Forest, Idaho Panhandle NF, Sandpoint vicinity, 94000661.

KANSAS

Leavenworth County

Western Branch, National Home for Disabled Volunteer Soldiers Historic District, Roughly bounded by US 73, Missouri Pacific Railroad and Missouri R., Limit St. and KS 5, Leavenworth, 94000671.

LOUISIANA

Terrebonne Parish

Argyle, 3313 Bayou Black Dr., Houma, 94000657.

MICHIGAN

Jackson County

Kentucky Homestead, 6740 Kentucky Ave., Columbia Township, Clark Lake, 94000663.

Wayne County

Detroit Naval Armory, 7600 E. Jefferson Ave., Detroit, 94000662.

MISSISSIPPI

Montgomery County

Winona Commercial Historic District, Roughly bounded by Magnolia, St., Central Ave., Carrollton St. and Sterling Ave., Winona, 94000659.

NEBRASKA

Boone County

Cedar Rapids City Hall and Library, 423 W. Main St., Cedar Rapids, 94000654.

Douglas County

Gallagher Building, 1902–1906 S. 13th St., Omaha, 9400053

Hall County

Huff, Lee, Apartment Complex, 213–215 1/2 S. Walnut St., 324 W. Koenig St., 316–318 1/2 W. Koenig St., Grand Island, 94000652.

Lancaster County

Kiesselbach, Theodore A., House, 3232 Holdrege St., Lincoln, 94000651.

Pawnee County

Table Rock Public Square Historic District, Roughly bounded by Pennsylvania, Nebraska, Luzerne and Houston Sts., Table Rock. 94000655.

NEW YORK

Montgomery County

Amsterdam (46th Separate Company) Armory (Army National Guard Armories MPS), Jct. of Florida Ave. and Dewitt St., SW corner, Amsterdam, 94000658.

PENNSYLVANIA

Delaware County

Weiss House and Weiss Summer House, Veterans Administration Medical Center, Lebanon, 94000673.

TEXAS

McLennan County

Veterans Administration Hospital Historic District, 4800 Memorial Dr., Waco, 94000672.

VIRGINIA

Hampton Independent City

Hampton Veterans Affairs Medical Center (preferred), Roughly bounded by John's Cr., Hampton Roads, Hampton R., Jones Cr., Hampton University and Martin Luther King Blvd., Hampton, 94000675.

WASHINGTON

Spokane County

Kemp & Hebert Building, 404 W. Main Ave., Spokane, 94000660.

WISCONSIN

Door County

FRANK O'CONNOR (bulk carrier) (Great Lakes Shipwrecks MPS), Address Restricted, North Bay vicinity, 94000656.

Milwaukee County

Northwestern Branch, National Home for Disabled Volunteer Soldiers Historic District, Roughly bounded by W. Blue Mound Rd., Mitchell Blvd., US 94 and the Veterans Affairs Medical Center, Milwaukee, 94000667.

Parking Lot Site (Milwaukee VA MPS), Address Restricted, Milwaukee vicinity, 94000670.

Soldier's Home Reef, 5000 W. National Ave., Milwaukee, 94000674.

Tire Swing Site (Milwaukee VA MPS), Address Restricted, Milwaukee vicinity, 94000669.

Train Trestle Site (Milwaukee VA MPS), Address Restricted, Milwaukee vicinity, 94000668.

[FR Doc. 94–14380 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32509]

Luzerne County Rail Corporation—Lease, Operation, and Acquisition Exemption—Certain Rail Lines and Operating Rights of F&L Realty and Pocono Northeast Railway, Inc.

Luzerne County Rail Corporation (LCRC), a noncarrier subsidiary of the Redevelopment Authority of Luzerne County, has filed a notice of exemption to lease and operate certain rail lines owned by Pocono Northeast Railway, Inc. (PNER) and F&L Realty (F&L) in Luzerne and Lackawanna Counties, PA, as follows: (1) The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6 at Rocky Glen, a distance of about 2.1 miles; (2) The Avoca Industrial Track, between milepost 1.8, at No. 7 Junction, and milepost 6.5 at Avoca, a distance of 4.7 miles, including the connection with the track of CR, between "LB" Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with DH in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; (3) The West Pittston Running Track, between milepost 0.0 at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4, at West Pittston, and milepost 194.4 in Kingston, a distance of 0.2 miles; (4) The Suscon Running Track, between milepost 154.5 at Suscon, and milepost 156.6, at Suscon, a distance of 2.1 miles; (5) The Wilkes-Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (6) The Nanticoke Industrial Track, between milepost 0.0 at Ashley, and milepost 2.6 at Central Scrap, a distance of 2.6 miles; (7) The Harry E. Breaker Spur, between milepost 0.1, at Maltby Junction, and milepost 0.5, a distance of 0.4 miles; (8) The APC line, between milepost 0.0 and milepost 0.6 in Wilkes-Barre, a distance of 0.6 miles; (9) The Brownsville Industrial Track, between milepost 0.0 at Hillside, and milepost 1.0 at Brownsville, a distance of 1.0 miles; (10) The Wilkes-Barre Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes-Barre, a distance of 3.0 miles; (11) The Miner's Mills Industrial Track, between milepost 173.6, at N. Wilkes-Barre, and Milepost 176.1 at Hudson, a distance of 2.5 miles; (12) The Pettibone Branch, between milepost 0.0 and milepost 0.759, at Dorranceton, a

distance of 0.759 miles; (13) The Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58, a distance of 8.1 miles; and (14) The DH Wilkes-Barre Connector, from milepost A–208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes-Barre, a distance of 2.5 miles.[1]

LCRC also will acquire PNER's operating rights over two segments of rail line owned by Greater Wilkes-Barre Partnership, Inc. (GWBP), and IR, Inc. (IR): (1) GWBP's Hanover Industrial Track, between milepost 0.0 at Ashley, and milepost 0.5, at Hanover Industrial Park, a distance of 0.5 miles; and (2) IR's Suscon Industrial Track, between milepost 154.5 at Suscon, and milepost 158.7, at Hillside, a distance of 4.2 miles.

The rail line LCRC will lease and operate totals approximately 55.55 miles.

LCRC expected to consummate its lease of the involved lines on May 26, 1994. As part of the transaction, LCRC will acquire an option to acquire the leased lines (except those owned by GWBP and IR), and it expects to exercise that option by September 1, 1994.

This proceeding is related to *Delaware-Lackawanna Railroad Co., Inc.—Trackage Rights Exemption—Luzerne County Rail Corporation*, Finance Docket No. 32510, wherein D-L has concurrently filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding its acquisition of local trackage rights over the 16 segments described herein.

Any comments must be filed with the Commission and served on: Kevin M. Sheys, Oppenheimer, Wolff & Donnelly, 1020 19th Street, NW, Suite 400, Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 6, 1994.

[1] The described lines are among those previously operated by PNER, which ceased all rail operations on September 17, 1993. Pursuant to *Delaware-Lackawanna Railroad Company, Inc.—Directed Service—Pocono Northeast Railway, Inc.*, Directed Service Order No. 1513 (ICC served Sept. 28 and Nov. 26, 1993), Delaware-Lackawanna Railroad Company, Inc. (D-L) performed interim uncompensated directed service over the described lines and other PNER/F&L lines between September 29, 1993, and May 23, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14404 Filed 6–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32510]

Delaware-Lackawana Railroad Co., Inc.—Trackage Rights Exemption—Luzerne County Rail Corporation

Luzerne County Rail Corporation (LCRC) has agreed to grant local trackage rights to Delaware-Lackawanna Railroad Co., Inc. (D-L) to operate over the following segments of line in Luzerne and Lackawanna Counties, PA: (1) The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6 at Rocky Glen, a distance of about 2.1 miles; (2) The Avoca Industrial Track, between milepost 1.8, at No. 7 Junction, and milepost 6.5 at Avoca, a distance of 4.7 miles, including the connection with the track of CR, between "LB" Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with DH in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; (3) The West Pittston Running Track, between milepost 0.0 at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4, at West Pittston, and milepost 194.4 in Kingston, a distance of 0.2 miles; (4) The Suscon Running Track, between milepost 154.5 at Suscon, and milepost 156.6, at Suscon, a distance of 2.1 miles; (5) The Wilkes Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (6) The Nanticoke Industrial Track, between milepost 0.0 at Ashley, and milepost 2.6 at Central Scrap, a distance of 2.6 miles; (7) The Harry E. Breaker Spur, between milepost 0.1, at Maltby Junction, and milepost 0.5, a distance of 0.4 miles; (8) The APC line, between milepost 0.0 and milepost 0.6 in Wilkes-Barre, a distance of 0.6 miles; (9) The Brownsville Industrial Track, between milepost 0.0 at Hillside, and milepost 1.0 at Brownsville, a distance of 1.0 miles; (10) The Wilkes-Barre Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes-Barre, a distance of 3.0 miles; (11) The Pettibone Branch, between milepost 0.0 and milepost 0.759, at Dorranceton, a distance of 0.759 miles; (12) The Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58 a distance of 8.1 miles; (13) The DH Wilkes-Barre Connector, from milepost A–208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes-Barre, a distance of about 2.5 miles; (14) The Hanover Industrial Track, between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Park, a distance of 0.5 miles; and (15) The Suscon Industrial Track, between milepost 154.5 at Suscon, and milepost 158.7, at Hillside, a distance of 4.2 miles. The trackage rights were to become effective on or after May 26, 1994.

This proceeding is related to *Luzerne County Rail Corporation—Lease, Operation, and Acquisition Exemption—Certain Rail Lines and Operating Rights of F&L Realty and Pocono Northeast Railway, Inc.*, Finance Docket No. 32509, wherein LCRC has concurrently filed a notice of exemption under 49 CFR 1150.31 regarding its lease, operation, and acquisition of certain rail lines including those involved here.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert R. Wimbish, Gerst & Heffner, 1700 K Street, NW, Suite 301, Washington, DC 20006.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14405 Filed 6–13–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed settlement agreement in In re Valley Steel Products

Company, Inc., No. 92–40778–293, (Bankr. E.D. Mo.) was lodged on June 2, 1994 with the United States Bankruptcy Court for the Eastern District of Missouri. The agreement resolves claims of the United States against Debtor Valley Steel Products Company, Inc. ("Valley Steel") in the above-referenced bankruptcy under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and under the Resource Conservation and Recovery Act ("RCRA") for contamination at Valley Steel's former manufacturing facility in Louisiana, Missouri (the "Site"). In the proposed settlement agreement Valley Steel agrees to give the United States an allowed general unsecured pre-petition claim of $1,900,000 in settlement of the United States' claims for response costs incurred or to be incurred by the Environmental Protection Agency at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to In re Valley Steel Products Company, Inc., No. 92–40778–293, DOJ Ref. #90–11–2–298B.

The proposed settlement agreement may be examined at the Office of the United States Attorney, 1114 Market Street, St. Louis, Missouri, 63101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas, 66101; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed settlement agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden, Chief,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–14332 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Pilkington plc and Pilkington Holdings Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Arizona at Tucson in *United States v. Pilkington plc and Pilkington Holdings Inc.*, Civil No. *94–345 TUC–WDB* as to both defendants.

The Complaint alleges that the defendants violated Sections 1 and 2 of the Sherman Act by restraining exports of float glass design and construction services by enforcing territorial and other restraints in license agreements entered into long ago that are now unjustified by sufficiently valuable intellectual property rights. Most of the agreements are more than 20 years old.

The proposed Final Judgment enjoins defendants from enforcing license provisions that restrain their United States-based licensees' freedom to use float glass technology anywhere in the world, and from enforcing license restrictions against their other licensees that restrain the licensees' freedom to use float glass technology in the United States. It also enjoins defendants from asserting any proprietary know-how rights in such technology against individuals or firms in the United States who are not licensees.

Float glass technology is used to make over 90 percent of the glass used for windows, windshields, architectural panels, and mirrors.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief, Professions and Intellectual Property Section, room 9903, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001 (telephone: 202/307–5799).

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the District of Arizona

United States of America, Plaintiff, v. *Pilkington plc and Pilkington Holdings Inc.*, Defendants. Civil Action No. 94–345. Filed: May 25, 1994. Judge Browning.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Arizona;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this 25th day of May, 1994.

For Plaintiff The United States of America

Robert E. Litan,

Deputy Assistant Attorney General.

Mark C. Schechter,

Deputy Director of Operations.

Gail Kursh,

Chief, Professions & Intellectual Property Section.

David C. Jordan,

Assistant Chief Professions & Intellectual Property Section.

K. Craig Wildfang,

Special Counsel to the Assistant Attorney General, Antitrust Division.

Kurt Shaffert,

Thomas H. Liddle,

Molly DeBusschere,

John B. Arnett, Sr.,

M. Lee Doane,

Attorneys, U.S. Dep't. of Justice, Antitrust Division, room 9903, J.C.B. 555 4th Street, N.W., Washington D.C. 20001, 202/307–0467

For the Defendants:

Rober E. Leverton,

Chief Executive, Pilkington plc.

Peter H. Grunwell,

Director, Plikington Holdings Inc.

John H. Shenefield,

Counsel for Defendants, Pilkington plc and Pilkington Holdings, Inc.

United States District Court for the District of Arizona

United States of America, Plaintiff, v. *Pilkington plc; and Pilkington Holdings Inc.*, Defendants. Civil Action No. 94–345. Filed: May 25, 1994, Judge Browning.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on May 25, 1994, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and before the taking of any testimony in this action, and without this Final Judgment constituting any evidence against or an admission by any defendant to any such issue;

And defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Therefore, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under sections 1, 2 and 6a of the Sherman Antitrust Act, 15 U.S.C. 1, 2, 6a.

II

Definitions

As used in this Final Judgment:

A. "Agreement" means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.

B. "Confidentiality" means the non-disclosure of information under an agreement, undertaking or obligation arising under applicable law to maintain its secrecy and/or limit its use.

C. "Fees" means money paid to the defendants for the right to use FLOAT TECHNOLOGY, including, but not limited to, royalties, lump sum payments and line fees.

D. "Final Award" means the Final Award dated August, 1992 in the arbitration proceedings between PPG Industries, Inc. and PILKINGTON.

E. "Flat Glass" means glass formed in a flat shape and glass formed flat and then bent or curved.

F. "Float Glass" means FLAT GLASS manufactured by floating molten glass on the surface of a bath of molten metal.

G. "Float Technology" means float process technology in existence on or before the date of the STIPULATION that is appropriate and useful for the design, construction, and/or operation of a float bath used in making FLOAT GLASS.

H. "Foreign Licensee" means any LICENSEE that is not a U.S. LICENSEE.

I. "Licensee" means any person, company, or entity that has entered into a LICENSE AGREEMENT with PILKINGTON.

J. "License Agreement" means any AGREEMENT, whether or not denominated as such, in being as of the date of the STIPULATION, that provided or provides for, or acknowledges or recognizes, the licensing of, or the right to use, FLOAT TECHNOLOGY for the manufacture of FLOAT GLASS, including, without limitation, any AGREEMENT (i) For sublicensing or (ii) for settling any dispute regarding rights to FLOAT TECHNOLOGY.

K. "Limitations" means: (1) Any limitation, or restriction of territories, fields, markets, or customers for the design and construction, or supervision of construction, of FLOAT GLASS plants, or the manufacture of FLOAT GLASS; and/or (2) any restriction or limitation, or purported restriction or limitation of the use of FLOAT TECHNOLOGY, whether the result of an affirmative prohibition or a limited authorization.

L. "Non-licensee" means any person, company, or entity which has not entered into a LICENSE AGREEMENT with PILKINGTON.

M. "North America" means the United States of America, Canada and the Republic of Mexico.

N. "Pilkington" means Defendant Pilkington plc.

O. "Stipulation" means the stipulation entered into by the parties to this action dated May 25, 1994.

P. "Subject Float Technology" means FLOAT TECHNOLOGY that in relation to any given LICENSEE was disclosed to that LICENSEE under its LICENSE AGREEMENT other than FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE while PILKINGTON owned 50% or more of that U.S. LICENSEE.

Q. "U.S. Licensee" means any LICENSEE that was or is incorporated in the United States or had or has its principal place of business in the United States, but shall not include any subsidiaries, affiliates or parents of any such LICENSEE nor any person while it is a subsidiary, affiliate or parent of any defendant. For purposes of this definition, an "affiliate" is an entity in which a person has an equity interest, directly or indirectly, of 50% or less; a "subsidiary" is an entity in which a person has an equity interest, directly or indirectly, of more than 50%; a "parent" is an entity that has, directly or indirectly, more than 50% of the equity interest of another entity.

R. "U.S. Non-Licensee" means any NON-LICENSEE that is domiciled or incorporated in the United States and that has its principal place of business in the United States.

III

Applicability

This Final Judgment applies to defendants and to each of their officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Injunction

Defendants are enjoined and prohibited as follows:

A. U.S. Licensees

1. Except as provided in subparagraph A.4. hereof, no defendant shall enter into, maintain, enforce or claim any right under any AGREEMENT to the extent such AGREEMENT requires, or purports to require, any U.S. LICENSEE to pay FEES, observe LIMITATIONS, or maintain CONFIDENTIALITY (subject to subparagraph A.3.) with respect to the use or sublicensing of any SUBJECT FLOAT TECHNOLOGY.

2. Except as provided in subparagraph A.4. hereof, no defendant shall assert against any U.S. LICENSEE any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY, subject to subparagraph A.3.) that it may have or claim with respect to any:

(a) Subject Float Technology; or

(b) FLOAT TECHNOLOGY not disclosed directly to that U.S. LICENSEE but otherwise in the possession of that U.S. LICENSEE unless for each item or combination of items thereof

(i) it has a good faith argument that such item, or combination of items, is a trade secret under applicable law, and

(ii) it has a good faith argument that it has been acquired in breach of CONFIDENTIALITY or otherwise unlawfully.

3. Defendants may assert against U.S. LICENSEES a claim of breach of CONFIDENTIALITY in respect of SUBJECT FLOAT TECHNOLOGY, but only if the claim is made as to that which is a trade secret under applicable law and is either:

(a) Based upon a U.S. LICENSEE's failure to make lawful and commercially reasonable efforts to preserve the CONFIDENTIALITY of SUBJECT FLOAT TECHNOLOGY; or

(b) Based upon a U.S. LICENSEE'S failure to include in any AGREEMENT transferring FLOAT TECHNOLOGY a lawful and commercially reasonable provision requiring the transferee to maintain the CONFIDENTIALITY of the transferred FLOAT TECHNOLOGY.

4. The provisions of subparagraphs A.1. and A.2. hereof shall not preclude in any way defendants from pursuing fully any claims for an account of profits, damages or any other monetary relief based on conduct occurring before the date of the STIPULATION in any proceedings instituted before that date.

B. U.S. Non-Licensees

1. No defendant shall enter into or enforce any AGREEMENT with any employee, contractor, supplier, consultant, or the like who is a U.S. NON-LICENSEE that contains any obligation of CONFIDENTIALITY to or for the benefit directly or indirectly of PILKINGTON with respect to FLOAT TECHNOLOGY, or any covenant to refrain from competing or engaging in any line of business relative to FLOAT TECHNOLOGY, that is of longer duration or greater scope than permitted under applicable law, provided that plaintiff agrees that defendants shall not be in contempt of this Final Judgment if they enter into or seek to enforce any such AGREEMENT based on a good faith argument that such AGREEMENT is permitted by applicable law.

2. No defendant shall assert against U.S. NON-LICENSEES (other than in respect of AGREEMENTS referred to in subparagraph B.1. above) any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY) that it may have or claim with respect to any FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE, unless for each item or combination of items thereof:

(a) Defendant has a good faith argument that such item, or combination of items, is a trade secret under applicable law;

(b) Defendant has a good faith argument that such item, or combination of items, has been acquired in breach of CONFIDENTIALITY or otherwise unlawfully;

(c) Defendant has, within fourteen (14) days after any such assertion:

(i) Made a showing in writing to the Department of Justice, Antitrust Division in support of the arguments described in subparagraphs 2(a) and 2(b), above;

(ii) Identified, enumerated, and described such item or combination of items (in sufficient detail and with sufficient clarity to distinguish them from information not a trade secret under applicable law) on a list submitted to the Antitrust Division and to the U.S. NON-LICENSEE against whom such right is asserted; and

(d) Such U.S. NON-LICENSEE is unwilling to make lawful and commercially reasonable efforts to maintain the CONFIDENTIALITY of any such item or combination of items for which it has received actual notice of a defendant's claim of proprietary rights therein pursuant to subparagraph 2(c)(ii), above, and for which a defendant has made the requisite showing pursuant to subparagraph 2(c)(i), above.

C. Agreements with Foreign Licensees

No defendant shall enter into, maintain, enforce or claim any right under any AGREEMENT to the extent such AGREEMENT contains any LIMITATIONS on a FOREIGN LICENSEE regarding its use or sublicensing of any FLOAT TECHNOLOGY that would have the effect of prohibiting or limiting the manufacture of FLOAT GLASS in NORTH AMERICA, provided that defendants may charge commercially reasonable and non-discriminatory FEES for the use or sublicensing of FLOAT TECHNOLOGY other than that disclosed by PILKINGTON to a U.S. LICENSEE; and provided further that a defendant may enforce CONFIDENTIALITY against any FOREIGN LICENSEE for use of FLOAT TECHNOLOGY, but, with respect to FLOAT TECHNOLOGY disclosed by PILKINGTON to a U.S. LICENSEE, only to the extent that the defendant has a good faith argument that the items or combination of items of such FLOAT TECHNOLOGY involved are trade secrets under applicable law.

D. Exports to the United States

No defendant shall, with the intent of restraining or limiting the amount of exports of FLOAT GLASS to the United States:

1. assert any proprietary FLOAT TECHNOLOGY know-how rights with respect to SUBJECT FLOAT TECHNOLOGY or

2. enter into, maintain, enforce or claim any right under any AGREEMENT with any LICENSEE.

E. Price of Float Technology

No defendant shall enter into, maintain or enforce any AGREEMENT that fixes, maintains or stabilizes the price to be charged for the use of any FLOAT TECHNOLOGY in the United States.

F. Representations

With respect to all FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE, no defendant shall represent to any person anywhere in the world that the person will or may incur liability to any defendant as a result of that person using, or contracting for the use of, or financing, facilitating, or promoting another person's use of such FLOAT TECHNOLOGY insofar as the same is acquired directly from any U.S. LICENSEE or any U.S. NON-LICENSEE provided that nothing shall limit or restrict any defendant from representing, claiming or enforcing any right to which either defendant may now or hereafter be entitled other than as is expressly enjoined by this Final Judgment.

G. Public Domain

1. Within sixty (60) days of the entry of this Final Judgment, PILKINGTON shall identify the FLOAT TECHNOLOGY found to be public knowledge in the FINAL AWARD to the Department of Justice, Antitrust Division; to all U.S. LICENSEES; and to all U.S. NON-LICENSEES who shall request the same in writing.

2. In the event that SUBJECT FLOAT TECHNOLOGY is: (a) Formally acknowledged in writing by PILKINGTON to be in the public domain, or (b) is determined to be in the public domain in a final award in any arbitration proceedings to which PILKINGTON is a party or (c) is held to be in the public domain in any proceedings to which PILKINGTON is a party conducted in a court of competent jurisdiction and provided that any such determination or holding is an essential relevant part of a final non-appealable decision or judgment binding upon PILKINGTON, then within sixty (60) days of such acknowledgment, award for judgment PILKINGTON shall send notice thereof identifying such public domain FLOAT TECHNOLOGY to the Department of Justice, Antitrust Division; to all U.S. LICENSEES; and to all U.S. NON-LICENSEES who

previously made a request pursuant to subparagraph G.1. above.

H. Patents

Nothing in this Paragraph IV shall be construed to apply to any lawful use of any patent or any patent right to which defendants may now or hereafter be entitled.

I. Construction

Nothing in this Paragraph IV shall be considered by implication either to permit or to prohibit any agreements, conduct or practices not expressly covered by this Final Judgment. Nothing in this Paragraph IV shall be construed as permission to engage in conduct that is not lawful, or as legalizing otherwise unlawful conduct nor as a determination that any conduct affected or subject to this Paragraph IV is unlawful. The legality or illegality of any conduct not expressly covered by this Final Judgment is left unaffected by the entry of this Final Judgment.

J. Records

During the term of this Final Judgment defendants shall maintain a file in the United States at the offices of defendant Pilkington Holdings Inc. containing the documents created or received after the date of this Final Judgment and identified further in this paragraph and during the term of this Final Judgment shall produce the same to the Department of Justice, Antitrust Division within sixty (60) days of a written request given to defendants at the principal office of Pilkington Holdings Inc., subject to any lawful privilege:

1. A copy of each LICENSE AGREEMENT entered into or amended;

2. A copy of each complaint (or its equivalent) filed in any proceeding, and each other document in which defendants asserted against any U.S. LICENSEE or U.S. NON-LICENSEE any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY);

3. A copy of each document constituting or containing a determination in any proceeding, or any acknowledgement by defendants that any item or combination of items of FLOAT TECHNOLOGY is, or has become, publicly known.

4. A copy of each document constituting or containing: (a) Any request for the communication of FLOAT TECHNOLOGY or a grant of rights to FLOAT TECHNOLOGY for the manufacture of FLOAT GLASS or sublicensing from any U.S. LICENSEE or U.S. NON-LICENSEE, and (b) defendant's response to any such request.

V

Notification

Within sixty (60) days after the entry of this Final Judgment, defendants shall either: (a) Deliver by certified or registered mail to each person to whom it has granted a LICENSE, or with whom it has entered into any confidentiality agreement pertaining to FLOAT GLASS, including without limitation equipment fabricators, suppliers, and employees a copy of this Final Judgment and the accompanying Competitive Impact Statement; or (b) cause to be published in one or more journals a copy of this Final Judgment or a summary of this Final Judgment, which journals and summary shall be agreed upon by plaintiff and defendants, and defendants shall promptly certify in writing to plaintiff the fact of their compliance with this provision.

VI

Reporting

A. To determine or secure compliance with this Final Judgment, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to defendants at their principal office, subject to any lawful privilege, be permitted:

1. Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment. PILKINGTON may elect, with respect to any such materials as may be located outside the United States of America at the time it receives such notice, to provide such access at a location within the United States that is reasonably acceptable to the duly authorized representative in lieu of providing access at the situs of the materials.

2. Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview officers, employees, or agents of defendants, who may have counsel present, regarding any matters contained in the Final Judgment. PILKINGTON may elect to make available for such interviews those of its officers, employees, or agents whose regular work station is outside the United States of America at a location within the United States that is reasonably acceptable to the duly authorized representative.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to defendants at their principal office, subject to any lawful privilege, defendant shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

C. No information or documents obtained by the means provided by this Section VI shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) which defendant is not a party.

VII

Further Elements of Judgment

A. This Final Judgment shall expire on the tenth anniversary of its entry.

B. Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII

Public Interest

Entry of this Final Judgment is in the public interest.

Entered:_____

_____

UNITED STATES DISTRICT JUDGE

United States District Court for the District of Arizona

United States of America, Plaintiff, v. *Pilkington plc and Pilkington Holdings Inc.*, Defendants. Civil Action No. 94–345, Filed: May 25, 1994, Judge Browning.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Pilkington plc ("Pilkington") and Pilkington Holdings Inc., Pilkington's indirectly, wholly-owned American subsidiary, in this civil antitrust action.

I

Nature and Purpose of the Proceeding

A. The Complaint

The government filed this civil antitrust suit on May 25, 1994, alleging that defendants violated Sections 1 and 2 of the Sherman Act by enforcing and maintaining agreements and understandings that unreasonably restrain interstate and foreign trade in the construction and operation of float glass plants and in float glass process technology, and by monopolizing the world market for the design and construction of float glass plants. Specifically, the Complaint alleges that, without sufficiently valuable intellectual property rights and through a network of bilateral patent and know-how license agreements and various understandings with most other float glass manufacturers in the world, defendants:

(a) Allocated and divided territories for, and limited the use of, float glass technology worldwide;

(b) Interpreted and enforced the territorial and use restrictions in the license agreements so that their combined effect prevented competitors from using or developing competing float glass technology;

(c) Required competitors to prove that all of the licensed technology had become publicly known before being relieved of the territorial and use restrictions;

(d) Imposed and enforced restrictions on competitors' ability to sublicense float glass technology;

(e) Imposed and enforced reporting and grant-back provisions in the license agreements;

(f) Imposed and enforced restrictions on exports of glass by licensees from and to the United States; and

(g) Continued enforcement of the territorial, use, and sublicense restrictions indefinitely, even after no further licensing royalties were payable and the licensed patents had expired.

The Complaint also alleges that Pilkington has monopolized the world market for the design and construction of float glass plants through license agreements that impose unreasonable restrictions on licensees and by other predatory and exclusionary conduct. Finally, the Complaint alleges that the conduct described above has had and continues to have direct, substantial, and reasonably foreseeable adverse effects on U.S. export trade and commerce in providing services and related equipment and materials for the design and construction of float glass plants outside the United States.

The prayer for relief seeks: (1) A declaration that the provisions in Pilkington's license agreements with float glass manufacturers that have the purpose or effect of limiting or restricting: (a) The territory in which a manufacturer may make or sell float glass, or (b) the use of float glass technology Pilkington originally disclosed to that manufacturer, or derived therefrom, are illegal and unenforceable; (2) an injunction against defendants' enforcing any such provisions; (3) an injunction against defendants' (a) interfering with the efforts of any person (i) in this country to provide or perform services for the design or construction of float glass plants anywhere in the world, or (ii) anywhere in the world to provide or perform services for the design or construction of float glass plants in the United States (including representing that such services would violate or infringe defendants' intellectual property rights, (b) interfering with the design, construction, or operation of any such plant or the sale or shipment of glass from those plants, or (c) monopolizing or attempting to monopolize the market for the design and construction of float glass plants; and (4) costs.

B. The Technology Market Involved

Flat glass includes glass formed in a flat shape or bent or curved for further fabrication and is used principally for windows in dwellings and commercial buildings, automobile windshields and other glass parts, architectural products, and mirrors. Almost all flat glass currently sold worldwide is made by the "float" process, which involves floating molten glass on the surface of a bath of molten metal, usually tin, which is sealed with a protective atmosphere. In a continuous process, molten glass is delivered to one end of the tin bath and is removed at the opposite end as a continuous ribbon of flat glass after cooling until it is rigid enough to retain its shape during removal.

Commercial float glass manufacture requires relatively large-scale, single-purpose plants that are not efficiently convertible to other uses; and other manufacturing facilities are not efficiently convertible to float glass production. The cost of designing and constructing a typically-sized float glass plant, including equipment, materials, and construction labor, is in the range of $100 to $150 million. During the years 1984–91, 55 new float plants were designed, built, and placed in service worldwide; of those, nine are in North America, including seven in the United States.

Between now and the end of the century, 30 to 50 new float glass plants are planned or projected worldwide, amounting to expenditures of as much as $5 billion. Many are expected to be built in developing countries, where contracts are likely to be awarded to outside bidders for plant design, engineering, construction, and construction supervision services. Such services often include the specifying, ordering, or procuring of process equipment and materials used in such plants.

Persons in the United States would compete, if not restrained, for the award of contracts to provide float glass design and construction services. To the extent such persons successfully compete for contracts to design and construct float glass plants to be built outside the United States, the resulting U.S. export trade or commerce would generate substantial domestic economic activity, including substantial opportunities for domestic providers of engineering and design services, equipment fabricators, and materials suppliers. It is estimated that, when a U.S. firm designs and supervises construction of a foreign plant costing roughly $100 million, approximately $35 to $50 million of that total eventually flows into the United States' economy in orders for domestic materials, equipment, and services. It is further estimated that, if not restrained, U.S. exporters of float glass technology may be expected to obtain between 10 percent and 50 percent of the 30 to 50 new plants planned or projected over the next several years. Thus, potential U.S. export sales for contractors, fabricators, and suppliers could amount to $500 million to $2.5 billion.

II

The Practices and Events Giving Rise to the Alleged Sherman Act Violations

A. Licensing Scheme

1. Background

Virtually all commercial flat glass was produced either by the old sheet glass process or the old plate glass process until 1962. In the late 1950s, Pilkington developed the first commercially successful float process for making flat glass, which eventually replaced both plate and sheet processes.[1] Pilkington obtained hundreds of patents worldwide covering its version of the float process and developed a considerable body of related know-how.

Beginning in 1962, Pilkington entered into patent and know-how license agreements with all its principal competitors. Now, over 90% of flat glass worldwide is manufactured under a Pilkington license agreement. Eight licenses were granted in the United States to: AFG Industries, Inc. ("AFG"); Combustion Engineering, Inc. (now AFG); Ford Motor Co. ("Ford"); Fourco Glass Co. (also now AFG); Guardian Industries Corp. ("Guardian"); Pennsylvania Float Glass, Inc. (now Guardian); PPG Industries, Inc. ("PPG"); and Libbey-Owens-Ford Co. ("LOF") (now owned 80% by Pilkington and 20% by Nippon Sheet Glass Co. Ltd.).

2. The Agreements

The Pilkington float license agreements typically: (a) Provided for Pilkington to disclose all "float process" [2] know-how it owned or controlled at the time, and (b) granted non-exclusive licenses under (i) patents and patent applications of a specified country or countries, (ii) the "float process" know-how to be disclosed to the licensee under the agreement, and (iii) all patented and unpatented "float process" improvements Pilkington owned, controlled, or developed within a certain time period. Most licenses did not grant the right to sublicense. Also, improvement exchange provisions of the agreements required the licensee to grant-back to Pilkington (*i.e.*, disclose and license) all patented and unpatented "float process" improvements the licensee owned, controlled, or discovered during the exchange period. The license agreements required both lump-sum payments and continuous royalties, and virtually all of them required that any disputes be settled by arbitration in London under the law of England.

The agreements imposed territorial and other use limitations by, in effect, "authorizing" each licensee to practice the licensed patents and use the licensed know-how only in a specified country or countries (usually the licensee's own domestic market), and only to make and sell flat glass.[3] The license agreements also imposed restraints on exports of glass from the specified territories. Those restraints applied to some U.S. licensees as well as to certain foreign licensees exporting to the United States. Export waivers have been granted by Pilkington in some cases, but were often limited as to time, location, and output.

Finally, the agreements imposed confidentiality and nondisclosure obligations on the licensees for all the know-how disclosed, unless and until the information or know-how becomes public knowledge. In practice, Pilkington placed the burden on the licensee to make any showing of public knowledge.

Today, virtually all of the original float license agreements themselves, as well as their improvement exchange and disclosure requirements, have terminated; the royalty obligations thereunder have become fully paid up; Pilkington's principal float glass patents have expired; and a substantial portion of its related know-how has become publicly known. Yet, the territorial and use restrictions, the confidentiality and nondisclosure obligations, the prohibition on sublicensing, and the arbitration clause and choice of law provision remain in full force and effect insofar as they apply to both licensed original know-how and unpatented improvements, most of which the world's flat glass producers have been using for decades.

As a result of the continuing restrictions in the agreements, existing licensees, including those in the United States, cannot design and build new float plants, or sublicense independent third parties to do so, outside their licensed "territories" without Pilkington's permission. Moreover, innovations in designs and technology that improve float process efficiency and float glass quality are important advantages in competing for contracts to design and construct (or supervise construction of) float glass plants; thus, geographically limiting the opportunities for economic exploitation of such innovations not only reduces the effectiveness of such competition but also reduces the incentives for innovation.

The adverse impact of the continuing license restrictions is substantial. Since Pilkington has no intellectual property rights of substantial value, the restraints are neither ancillary nor reasonably necessary to any legitimate purpose or transaction, and are, therefore, unreasonable restraints on trade within the meaning of Section 1 of the Sherman Act, 15 U.S.C. 1.

3. Current Status of Licenses

There are over 60 Pilkington float licenses agreements. Most of therm contain no authorization for the licensee to manufacture or sublicense outside its original territory now or at any time in the future.

A small number of agreements provide that "the territorial and other limitations on use cease to apply" after a period of time (usually 30 years after commencement of royalty payments but, in any case, not before the agreement terminates and the licenses granted thereunder become paid up). Such licenses are held by just three companies (other than Pilkington and its subsidiaries or affiliates). In the absence of the stipulated Final Judgment, after 1996, only these three companies will have worldwide rights to manufacture on their own and to sublicense more than 50 percent-owned subsidiaries without any additional royalty or lump-sum payment to Pilkington.[4]

In sum, in the absence of the stipulated Final Judgment, the vast majority of current and former Pilkington licensees (who together make up the bulk of those competitors capable of providing float glass plant design and construction services) continue to be restrained from either manufacturing glass or sublicensing (selling) glass

[1] Pilkington's float process substantially reduced capital and operating costs, when compared with the plate process, by eliminating the need for grinding and polishing, but was not at first cost competitive with the sheet process. By 1970, float glass had almost completely replaced plate glass and, because of quality improvements and cost reductions, was competitive with sheet glass.

[2] The license agreements very broadly defined "float processes" as "all processes * * * used for * * * production of flat glass * * * with the aid of a bath of molten material * * * with which the glass is in contact at any stage during its production," but exclusing everything (i) prior to delivery of the glass to the bath, and (ii) after its emergence from the lehr (where it undergoes controlled cooling).

[3] While most agreements contained no express, contractual prohibitions against manufacturing in any particular country outside the specified, licensed countries, the grants are all limited licenses, "authorizing" manufacture of float glass only in the specified countries.

[4] But absent the stipulated judgment, even those rights will not allow these three companies to compete effectively in most developing countries, where the future market is for new float plants, because of ownership limitations there that require, as a legal or practical matter, a domestic company to have majority ownership of new manufacturing ventures.

technology outside their original territories.

B. Litigation

Pilkington has routinely used litigation, and threats of litigation, to enforce its anticompetitive license restrictions. On several occasions, Pilkington has actually sued or brought arbitration proceedings against its American float glass licensees. In 1983, Pilkington sued its U.S. licensee, Guardian Industries, alleging that Guardian had improperly used and disclosed Pilkington's proprietary know-how in building a float glass plant in Luxembourg. After an adverse preliminary ruling by the court, Pilkington agreed to settle its claims on terms favorable to Guardian, permitting Guardian to construct float glass plants outside its previously-prescribed territory in return for Guardian's agreement to preserve the confidentiality of Pilkington's float technology.

Pilkington more successfully asserted claims against PPG in 1978 and again in 1985. In a 1985 arbitration concluded in 1992, Pilkington was able to enforce its 1962 license agreement with PPG and to recover damages from PPG stemming from PPG's construction of a float glass plant in China in the early 1980s. The arbitrators determined that, while much of Pilkington's alleged secret know-how was publicly known by 1985, PPG had failed to prove that 45 specific items were publicly known. The arbitrators did not consider the question of whether any of those items were valid trade secrets.

Also in the early 1980's Pilkington sued U.S. licensee AFG over unpaid royalties relating to AFG's operation of float glass plants constructed using AFG's own technology. The case was settled in 1985, resulting in substantial limitations on AFG's ability to use and sell the disputed technology.

C. Other Exclusionary Conduct

The evidence demonstrates that Pilkington acted to restrict competition and control output. Pilkington licensed its principal competitors, which had the effect of minimizing the likelihood of their developing competing float glass technologies. At the same time, Pilkington turned down requests for float glass licenses from persons who were not already flat glass producers. The territories to which each licensee was limited by its float license agreement generally corresponded to the territories in which it operated prior to entering into that agreement. Thus, Pilkington's network of bilateral patent and know-how licenses, containing territorial and other use limitations, as well as confidentiality obligations, provided a framework for Pilkington to control the worldwide market for float glass plant design and construction services. The evidence also indicates Pilkington's effort to coordinate activities of certain of its licensees, and reflects a shared or common interest among certain licensees to limit entry by competing technologies.

Pilkington exercised its right to grant or deny licenses not only in its own self-interest to avoid direct competition, but also in ways designed to benefit licensees in their territories. When Pilkington did grant float licenses, it frequently did so only to firms controlled by an existing licensee or to a joint venture of existing licensees.

One of Pilkington's goals in deciding whether to license, and in imposing territorial/export restraints when it did, was to control price, capacity, and output of flat glass. Pilkington sometimes reached separate understandings with licensees who exceeded, or threatened to exceed, the territorial or other limitations imposed by their licenses. By discouraging or challenging the construction of new float plants outside any licensee's original, assigned territory, Pilkington sought to maintain control over glass output and the sale or disclosure of float technology, for its own benefit, as well as that of the other licensees. Pilkington also tried to dissuade flat glass distributors and suppliers of materials and equipment used in building float plants from dealing with non-licensees and threatened reprisals if they did.

Pilkington reserved for itself certain markets, and turned down requests for licenses in those markets, including requests from existing float licensees, for the two-fold purpose of exploiting those markets itself, and controlling exports from those markets to other parts of the world. Pilkington attempted to achieve this goal by coordinating the shipment of glass to specific customers through certain licensees and indirectly, its U.S. subsidiary LOF.

III

Explanation of the Proposed Final Judgment and Its Anticipated Effect on Competition

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds entry is in the public interest. Section VIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment provides for affirmative and injunctive relief, which is expected to eliminate any residual anticompetitive effects of the restrictive license agreements and other conduct challenged by the Complaint. Specifically, consistent with the United States' antitrust jurisdiction under the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. 6a, the Final Judgment would eliminate all territorial and use limitations Pilkington imposed on its U.S. licensees and allow them to manufacture on their own or sublicense any third party to do so anywhere in the world, free of charge, using the float technology disclosed and licensed to those licensees. Such manufacturing and sublicensing rights would be subject only to limited confidentiality obligations imposed under certain narrow and specific conditions.

The Judgment also would provide, in effect, a similar "safe harbor" for any other American individual or firm who is not a Pilkington float glass licensee to use any float technology in its possession without liability to Pilkington. Further, the Judgment would enjoin certain conduct having the purpose or effect of restricting exports of float glass to the United States or limiting the use of float technology or manufacture of float glass in North America. Finally, the Judgment would enjoin the defendants from making certain adverse representations about U.S. licensees or non-licensees and would require the defendants to disclose to those American entities the results of any adjudication of Pilkington's alleged trade secrets.

A. Section IV.A.: U.S. Licensees

The injunctive provisions of this subsection apply to Pilkington's U.S. float glass licensees, defined as any person or entity incorporated or having its principal place of business in the United States and having entered into any agreement with Pilkington prior to the stipulation date for the licensing of or the right to use float glass technology. It does not apply to any subsidiary (at least 50 percent owned), affiliate (less than 50 percent owned), or parent of any U.S. licensee,[5] or to any person

[5] This exclusion is designed to prevent a foreign entity from claiming the benefits of specific provisions of the proposed Final Judgment designed for U.S. entities simply by acquiring, being acquired by, or becoming affiliated with any American entity. United States and foreign entities are treated differently under the proposed Judgment (*see*

while it is a subsidiary, affiliate, or parent of any defendant.

Specifically, subject to a narrow exception and certain conditions noted below, subsection IV.A.1. would prohibit defendants from entering into, maintaining, enforcing, or claiming any right under any agreement or understanding that restrains in any way a U.S. licensee from using or sublicensing anywhere in the world the float glass technology Pilkington disclosed and licensed to it, or that requires such licensee to pay royalties or lump sum or line fees for such use or sublicensing. Also, subject to the same exception and conditions, subsection IV.A.2. would prohibit defendants from asserting against a U.S. licensee any alleged proprietary know-how rights in the same float technology disclosed and licensed to that licensee.

The exception and conditions mentioned above are contained in subsections IV.A.3. and IV.A.4. Subsection IV.A.3. provides that defendants may assert a breach of confidentiality claim against a U.S. licensee concerning licensed technology, only if the claim (i) pertains to a trade secret under applicable law, and (ii) is based on the U.S. licensee's failure either to make lawful and commercially reasonable efforts itself to maintain confidentiality or to require by contract anyone to whom it transfers such technology to do so. Subsection IV.A.4. specifically preserves whatever claim a defendant may have for an account of profits, damages, or any other monetary relief asserted in any proceedings begun before the stipulation date and based on conduct occurring before that date. However, this exception does not allow defendants to bring future actions for monetary relief, whether or not based on prior conduct.

Finally, subsection IV.A.2., again subject to the same exception and conditions described above, also prohibits defendants from asserting against a U.S. licensee any alleged proprietary know-how rights in float technology acquired from any source other than Pilkington, unless defendant have a good faith argument that each item, or combination of items, of such technology: (i) Is a trade secret under applicable law, and (ii) has been acquired in breach of confidentiality or otherwise unlawfully.

B. Section IV.B.: U.S. Non-Licensees

The injunctive provisions of this subsection apply to any person or entity domiciled or incorporated in the United States and having its principal place of business here, but who has not entered into a float glass license agreement with Pilkington. Such persons or entities fall into two general categories: (i) Non-licensees who are nevertheless under some contractual confidentiality or noncompete obligation for Pilkington's benefit (*e.g.*, employees, contractors, suppliers, consultants, etc.), and (ii) persons who are not under any such obligation.

As to the first category, subsection IV.B.1. of the proposed Judgment prohibits defendants from entering into or enforcing any agreement containing such a confidentiality obligation or covenant not to compete that is longer in duration or greater in scope than permitted under applicable law. That subsection, however, provides that entering into or enforcing such an agreement will not constitute contempt of the Judgment if defendants have a good faith argument that it is permitted by applicable law.

Subsection IV.B.2. of the proposed Final Judgment applies to all U.S. non-licensee competitors and potential entrants into the float glass technology market. It prohibits defendants from asserting against such a person alleged proprietary know-how rights in float glass technology disclosed and licensed by Pilkington to any U.S. licensee, unless each of several specific conditions are met. First, defendants must have a good faith argument that each item, or combination of items, of such technology asserted (i) is a trade secret under applicable law, and (ii) has been acquired in breach of confidentiality or otherwise unlawfully. Second, within 14 days after any such assertion, defendants must (i) make a written showing to the Department of Justice supporting both arguments referred to above, and (ii) enumerate and describe each such item or combination of items asserted, to distinguish them from information not a trade secret, on a list submitted to both the Department and the U.S. non-licensee against whom they are asserted. Finally, in order for Pilkington to assert a claim, such U.S. non-licensee must be unwilling to make lawful and commercially reasonable efforts to maintain the confidentiality of those items or combination of items for which it has received actual notice of defendants' claim, and for which they have made the requisite showing.

C. Section IV.C.: Foreign Licensees

Subject to two conditions noted below, subsection IV.C. of the proposed Judgment prohibits defendants from entering into, maintaining, enforcing, or claiming a right under any agreement or understanding that in any way restrains a foreign float glass licensee from using or sublicensing float glass technology in North America. Further, defendants may not charge any fees for the use or sublicensing in North America of float glass technology disclosed by Pilkington to any U.S. licensee, and may not enforce any confidentiality claims for the use or sublicensing of such technology, unless defendants have a good faith argument that each item or combination of items of such technology involved is a trade secret. However, defendants may enforce confidentiality claims against foreign licensees' use or sublicensing in North America of float glass technology not disclosed to any U.S. licensee, and may charge them commercially reasonable and non-discriminatory fees for the use of such technology.

D. Other Provisions

Subsection IV.D. of the proposed Judgment prohibits defendants from asserting any proprietary know-how rights or enforcing any agreements with the intent of restraining or limiting the amount of exports of float glass to the U.S. Subsection IV.E. prohibits defendants from entering into, maintaining, or enforcing any agreement that fixes, maintains, or stabilizes prices for the use of float glass technology in the U.S. Subsection IV.F. prohibits defendants for representing to any person anywhere in the world that the person's own use, or its financing, promoting, or facilitating another person's use, of float glass technology acquired directly from any U.S. licensee or U.S. non-licensee would result in any liability to defendants.

Subsection IV.G. requires defendants to identify to the Department, and to all U.S. licensees and all U.S. non-licensees who request it, the float glass technology found to be public knowledge in the arbitration proceedings concluded in August 1992 between Pilkington and PPG. This subsection requires a similar identification for any such technology disclosed and licensed to any U.S. licensee that Pilkington acknowledges in writing to be in the public domain or that is so held to be in any arbitration or court proceeding to which Pilkington is a party.

E. Effect on Competition

The relief in the proposed Final Judgment is designed to ensure that: (1) Pilkington's U.S. licensees, principally PPG, Ford, Guardian, and AFG, will be free of the territorial and use restrictions

Section IV.C.) because the jurisdictional reach of the U.S. antitrust laws is limited.

in their 20 to 30-year-old license agreements to compete for the design and construction of float glass plants abroad as well as in the U.S.; and (2) U.S. firms with the requisite expertise that never were Pilkington licensees but currently are attempting to enter the market will be free to do so without unreasonable restraint or interference. The effective removal of the license restrictions and the "safe harbor" provided by the proposed Final Judgment should encourage and facilitate others with the requisite expertise, including former employees of Pilkington and its licensees, to enter the market. It is expected that the combination of unrestrained existing manufacturers and new entrants will result in improved glass processes at lower prices.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in this matter.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and defendants, to withdraw its consent to the proposed Judgment at any time prior to entry. Section I of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

VII

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment is a full trial on the merits. That alternative was rejected because the relief provided in the proposed Judgment will fully and effectively open the market to competition, as well as eliminate any residual effects of the alleged violations, and would produce immediate positive competitive impact; litigation would involve obvious risks as well as substantial costs to the United States; and preparing the case for trial, trying it, and disposing of appeals after trial might delay obtaining any relief for several years.

Dated: May 25, 1994.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that on this day of May, 1994 he caused true and correct copies of the foregoing Complaint, Stipulation, Competitive Impact Statement, and Government's Motion Under Local Rule 1.2(e)(1) To Assign This Case With Above-Named Related Cases to be served by mail upon the following:

John H. Shenefield, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036—Attorney for Defendants Pilkington plc, Pilkington Holdings Inc., and Libbey-Owens-Ford Co. in CIV 92-752-TUC-WDB, CIV 93-552-TUC-WDB, and CIV 94-TUC-WDB.

Thomas D. Barr, Esq., Cravath, Swayne & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019—Attorney for Plaintiff PPG Industries, Inc. in CIV 92-775-TUC-WDB.

Kenneth C. Anderson, Esq., 685 Third Avenue, New York, NY 10017—Attorney for Plaintiff International Technologies Consultants, Inc. in CIV-93-552-TUC-WDB.

Jeffrey Willis, Esq., Streich Lang, 33 N. Stone Avenue, Tucson, AZ 85701—Attorney for Defendant Guardian Industries Corporation in CIV-93-552-TUC-WDB.

Donald A. Wall, Esq., Squire, Sanders & Dempsey, Two Renaissance Square, 40 North Central Avenue, Suite 2700, Phoenix, AZ 85004-4441—Attorney for Defendant AFG Industries, Inc. in CIV-93-552-TUC-WDB.

K. Craig Wildfang,

Attorney for the United States.

[FR Doc. 94-14046 Filed 6-13-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 21, 1994, and published in the **Federal Register** on April 1, 1994 (59 FR 15458), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-14334 Filed 6-13-94; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 93-21]

Wilbert McClay, Jr., M.D.; Revocation of Registration

On November 24, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Wilbert McClay, Jr.,

M.D. (Respondent), of Baton Rouge, Louisiana, proposing to revoke his DEA Certificate of Registration, AM3221708, and deny any pending applications for registration as a practitioner. The statutory basis for seeking the revocation of the Certificate of Registration was that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in New Orleans, Louisiana on August 10, 1993. On October 6, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended a suspension of Respondent's DEA registration, to run concurrently with the suspension of his medical license by the Louisiana State Board of Medical Examiners, as well as the concurrent indefinite suspension of his Schedule II privileges.

On October 18, 1993, the Government filed exceptions to Judge Tenney's opinion, and on November 8, 1993, the administrative law judge transmitted the record to the then-Acting Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that in August 1984, a hearing was held before the Louisiana State Board of Medical Examiners (Board) to determine whether Respondent prescribed legally controlled substances in other than a legal or legitimate manner, and to allow him to respond to charges of "medical incompetency" under the Louisiana State Medical Practice Act. The charges were based on an investigation conducted by the Louisiana Division of Narcotics and Dangerous Drugs. The investigation revealed that from January 1979 through October 1982, Respondent prescribed a number of Schedule II controlled substances.

Following the hearing, the Board issued a decision on January 31, 1985, in which it found that Respondent had issued prescriptions without a legitimate medical purpose and ordered that Respondent's license to practice medicine be suspended for three months, followed by a three-year period of probation. The Board further ordered that Respondent surrender his state and Federal permits to handle Schedule II and Schedule III controlled substances. After the three year probation period, the Board reinstated Respondent's Schedule III privileges, however, his Schedule II privileges remained suspended indefinitely.

In April 1988, the Respondent contacted the Board's Executive Secretary concerning his probationary status. The Executive Secretary erroneously advised the Respondent that because he had successfully completed his probation, his medical license and controlled substances privileges were unrestricted.

In addition, the Executive Secretary mistakenly mailed a notification letter to the Louisiana Department of Health and Human Resources, Division of Licensing and Certification, informing them that Respondent's Schedule II controlled substances privileges were no longer restricted. Upon discovering the error, the Executive Secretary attempted unsuccessfully to telephone the Respondent. Following Respondent's probation period, DEA issued Respondent a Certificate of Registration limited to Schedules IV and V, and in reliance on the Board's incorrect information, Respondent's DEA registration was modified to include Schedule II and III in June 1988. The registration was renewed on March 3, 1990, in Schedules II–V.

On July 29, 1988, the Board's Executive Secretary sent a letter to the Respondent advising him that she had misread the Board's 1985 order and that the Respondent remained without Schedule II privileges. On August 1, 1988, the Program Manager for the Division of Licensing and Certification at the Louisiana Department of Health and Human Resources sent Respondent a copy of his state controlled substances license and informed the Respondent that since his medical license had been restricted by the Board, his controlled substances license must also be restricted.

After receiving erroneous information from the Board that Respondent had an unrestricted medical license, the Division of Licensing and Certification sent a second letter to the Respondent on August 19, 1988, with an enclosed unrestricted state controlled substances license.

When the Board was informed that Respondent had been issued an unrestricted state controlled substances license, the Board again wrote to the Respondent on September 12, 1988, advising him that he had been mistakenly issued an unrestricted controlled substances registration and that his Schedule II privileges remained suspended.

On September 29, 1988, the Respondent appeared before the Board to request that the Board lift the restrictions that had been placed on his medical license and prescribing privileges. The Board informed the Respondent that his schedule II privileges would remain suspended.

In July 1991, the Board received information that the Respondent had written three prescriptions in 1991 for Schedule II controlled substances. On July 2, 1991, DEA contacted the Respondent by telephone, requesting that he surrender his registration so that it could be modified to reflect an authorization to handle Schedules III–V. Respondent informed DEA that it received incorrect information from the Board, and that Respondent was, in fact, permitted to prescribe Schedule II controlled substances, The DEA also sent Respondent a letter dated July 23, 1991, requesting the voluntary surrender of his Schedule II and IIN privileges. Shortly thereafter, the Respondent notified DEA in writing of his refusal to voluntarily surrender his Schedule II privileges.

The Respondent testified at the administrative hearing that because of his relocation to another office, he did not receive the August 1, 1988 notice from the Program Manager for the Division of Licensing and Certification regarding the restrictions that were placed on his medical license and controlled substances license until the summer of 1992. The Respondent also testified that although he received the September 12, 1988 letter from the Board advising him that he had been mistakenly issued an unrestricted controlled substances registration and that his Schedule II privileges remained suspended, he did not read it because, in his opinion, "the letter was * * * moot." The administrative law judge found Respondent's testimony in this regard not credible, since the Respondent implicitly demonstrated knowledge of the contents of the letters by appearing before the Board in September 1988 to request that the restrictions be removed from his medical license.

The Respondent also admitted at the administrative hearing that he wrote three prescriptions for Schedule II controlled substances in 1991 and that he was unaware of any restriction that would have prohibited him from prescribing these controlled substances. Respondent further testified that DEA did not ask him to surrender his DEA registration.

In December 1991, Respondent appeared before the Board to respond to charges that he prescribed Schedule II controlled substances in violation of the restrictions placed on his license by the Board in January 1985. On January 9, 1992, the Board issued its decision and order and found that Respondent was at all times aware of the restrictions placed on his license by the order of January 31, 1985. As a result, effective April 1, 1992, the Board suspended Respondent's medical license for six months, and continued the indefinite suspension of his Schedule II prescribing privileges.

In June 1992, the Civil District Court for the Parish of New Orleans, State of Louisiana, granted Respondent's motion for stay of the Board's order of suspension of his medical license. On November 12, 1992, the court denied Respondent's appeal from the decision of the Board. Respondent has been granted a second stay of the suspension of his medical license, pending the outcome of his appeal filed with the Fourth Circuit of the State of Louisiana.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4) the Deputy Administrator may revoke a registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

In considering whether grounds exist to revoke Respondent's registration pursuant to 21 U.S.C. 824(a)(4), the administrative law judge found factors one, two, four and five listed in section 823(f) relevant. Factor one is applicable by virtue of the fact that the Louisiana State Board of Medical Examiners suspended Respondent's Schedule II prescribing privileges indefinitely. Factors two, four and five are applicable based upon Respondent's abuse of his Schedule II prescribing privileges during the period of January 1979 and October 1982, and his unauthorized prescribing of Schedule II controlled substances on three occasions in 1991.

Respondent argued that he believed that he was in full compliance with State and Federal law since he had a Certificate of Registration from both the State of Louisiana and the DEA. The administrative law judge concluded that Respondent's reliance upon these mistakenly issued documents was unreasonable. Respondent was notified on several occasions by both letter and telephone conversations that his Schedule II controlled substances privileges had been erroneously reinstated.

The administrative law judge recommended a suspension of Respondent's DEA Certificate of Registration to run concurrently with the suspension of Respondent's medical license by the Board. The administrative law judge further recommended that the suspension of the Respondent's Schedule II privileges be continued for the period of the State's suspension, which is currently indefinite.

The Government filed exceptions to the administrative law judge's recommendation of a suspension of Respondent's DEA registration to run concurrently with the state's suspension, since the record was not clear as to whether the Respondent has already served the six month suspension of his state license in view of the various appeals and stays of the Board's decision. The Government also took exception to the administrative law judge's recommendation that the suspension of the Respondent's DEA Schedule II privileges coincide with the state's indefinite suspension of those privileges. The Government argued that Respondent's flagrant disregard for the rules and regulations pertaining to controlled substances warranted, at the very least, revocation of his Schedule II privileges.

The Deputy Administrator having considered the entire record adopts the administrative law judge's findings of fact and conclusions of law, however, disagrees with both aspects of the recommended ruling of a suspension of Respondent's DEA registration. The record is clear that Respondent issued controlled substance prescriptions without legitimate medical purpose and not in the good faith administration of bona fide treatment. The Respondent lost all of his controlled substance privileges on two, albeit short, occasions in 1985 (three months) and 1992 (six months). It is uncontroverted that Respondent lost his Schedule II privileges in January 1985, and they were never restored. Despite these prohibitions, he prescribed Schedule II controlled substances on at least three occasions in 1991, and although he was notified on several occasions that the reinstatement of his Schedule II privileges was erroneous, he refused to surrender any of his registrations. Respondent has shown repeated disregard for the rules and regulations relating to controlled substances.

The Deputy Administrator concludes that a suspension of Respondent's DEA Certificate of Registration to run concurrent with the Louisiana Board's six month suspension is minimal and ineffective. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM3221708, issued to Wilbert McClay, Jr., M.D., be and it hereby is, revoked, however, after one year, favorable consideration will be given to an application for a limited registration. This order is effective July 14, 1994.

Dated: June 6, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–14335 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated March 21, 1994, and published in the **Federal Register** on April 1, 1994, (59 FR 15459), Stepan Chemical Company Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

Comments were received, however, no written request for a hearing was received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer

of the basic classes of controlled substances listed above is granted.

Dated: May 16, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–14336 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration
Contributions Operations
1205–0178; ETA 581
Quarterly
State or local governments
53 respondents; 8 hours per response; 1,696 total hours; 1 form

Provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registrations, number delinquent in filing contribution reports, number and extent of tax delinquencies and results of field audit program.

Reinstatement

Occupational Safety and Health Administration
Ionizing Radiation
1218–0103
On occasion
Businesses or other for-profit; small businesses or organizations
48 respondents; 2 hours per response; 96 total hours

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Ionizing Radiation. The standard requires that employers notify the Occupational Safety and Health Administration of Ionizing Radiation overexposure.

Signed at Washington, DC this 9th day of June, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–14406 Filed 6–13–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 24, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 24, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 31st day of May, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Fruit of The Loom (Wkrs)	Osceola, AR	05/31/94	04/15/94	29,912	Tee Shirts.
Western Consultants, Inc. (Wkrs)	Denver, CO	05/31/94	04/20/94	29,913	Oil and Gas.
Valdese Textiles, Inc. (Co)	New York, NY	05/31/94	05/23/94	29,914	Polyester Woven and Jacquards Fabric.
Sportswear Associates, Inc. (Wkrs)	Lafayette, TN	05/31/94	05/13/94	29,915	Ladies Sportswear
Smith Equipment Co., Inc. (Wkrs)	Clifton, NJ	05/31/94	05/16/94	29,916	Smoking Ovens.
Smith Megapak, Inc. (Wkrs)	Clifton, NJ	05/31/94	05/16/94	29,917	Smoking Ovens.
Sharp Electronics Corp. (Wkrs)	Mahwah, NJ	05/31/94	05/12/94	29,918	Consumer Electronic Servicing.
Pennzoil Products Co. (IUE)	Bradford, PA	05/31/94	05/17/94	29,919	Crude Oil.
Goody Products, Inc. (Wkrs)	Kearny, NJ	05/31/94	05/18/94	29,920	Barrettes.
Douglas & Lomason Co. (Co)	Phenix City, AL	05/31/94	04/29/94	29,921	Auto Trim.
CINCH Connectors (Wkrs)	New Hope, MN	05/31/94	05/20/94	29,922	Electrical Connectors.
Chock Full O'Nuts (Co)	Linden, NJ	05/31/94	05/13/94	29,923	Coffee.
Breckenridge (ILGWU)	Boston, MA	05/31/94	05/16/94	29,924	Ladies Dresses and Sportswear.
Bill's Well Service (Wkrs)	St. Codell, KS	05/31/94	04/30/94	29,925	Fix Oil Wells.
Armco Corp/Empire Detroit Steel (USWA).	Mansfield, OH	05/31/94	05/05/94	29,926	Steel.
Walker Manufacturing Co. (UAW)	Hebron, OH	05/31/94	05/20/94	29,927	Exhaust Systems.
True Temper Hardware Co. (Wkrs)	Anderson, SC	05/31/94	05/12/94	29,928	Cutting Tools.
District No. 4, NMU/MEBA (NMU)	Port Arthur, TX	05/31/94	05/09/94	29,929	Petroleum Products.
Lou Levy & Son (ILGWU)	Jersey City, NJ	05/31/94	05/13/94	29,930	Ladies' Coats.
Guiberson AVA (Co)	Dallas, TX	05/31/94	05/20/94	29,931	Oilfield Services.
Lou Levy & Son (ILGWU)	New York, NY	05/31/94	05/13/94	29,932	Ladies' Coats.

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than June 24, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than June 24, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 6th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
DeSoto, Inc. (Wkrs)	Stone Mountain, GA	05/24/94	NAFTA–00119	Liquid soap for automatic dishwashers.
Walker Manufacturing Company; Newark Plant (UAW).	Hebron, OH	05/26/94	NAFTA–00120	Exhaust systems; manufacturing of welded assemblies including pipes, flanges, mufflers, and resonators.
Kayser-Roth Corporation; No Nonsense Factory Outlet, Inc. (Wkrs).	Greensboro, NC	05/31/94	NAFTA–00121	Panty hose and socks.
Pacific Sound Resources Inc.; Seattle and Bainbridge Island (AFL–CIO).	Seattle, WA	05/31/94	NAFTA–00122	Pressure preserved lumber, poles and pilings.
Safeway, Inc.; M.I.S. (Wkrs)	Oakland, CA	05/31/94	NAFTA–00123	Programming services (ie: MIS systems).
S & H Fabricating and Engineering, Inc. (GMP).	Sanford, FL	06/01/94	NAFTA–00124	Air conditioners for automobiles.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Wells Lamont Corp.; Portland Glove Company (ACTWU).	Carlton, OR	05/24/94	NAFTA–00125	Leather gloves.
Xentek, Inc. (Co.)	San Marcos, CA	05/27/94	NAFTA–00126	Electric transformers manufacturing.

[FR Doc. 94–14408 Filed 6–13–94; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,508; J & R Wood Products, Inc., Roseburg, OR

TA–W–29,574; Martin Marietta Magnesia Specialties, Inc., Manistee, MI

TA–W–29,496; Electronix Servicenter, Irving, TX

TA–W–29,708; Ottenheimer & Co., Rocky Mount, VA

TA–W–29,805; Radform Tool Co., East McKeesport, PA

TA–W–29,413 & TA–W–29,414; Adobe Mining Co., Kittanning, PA and Midland, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,448; Ingersoll-Dresser Pump Co., Phillipsburg, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,562; Hembree Well Service, Inc., Ellis, KS

The workers' firm does not produce an article as required for certifiction under Section 222 of the Trade Act of 1974.

TA–W–29,537; Hembree Well Service, Inc., Ness City, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,626; Jockey Int'l, Inc., Distribution Center, Kenosha, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,664; Bristol Consolidators, Inc., Greenville, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,699; Weyerhaeuser Co., Klamath Falls, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,733; Potomac Mine Island Creek Coal Co., Bayard, WV

U.S. imports of coal were negligible in 1992 and 1993.

TA–W–29,805; Radform Tool Co., East McKeesport, PA

TA–W–29,413 & TA–W–29,414; Adobe Mining Co., Kittanning, PA and Midland, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,448; Ingersoll-Dresser Pump Co., Phillipsburg, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,562; Hembree Well Service, Inc., Ellis, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,537; Hembree Well Service, Inc., Ness City, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,626; Jockey Int'l, Inc., Distribution Center, Kenosha, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,664; Bristol Consolidators, Inc., Greenville, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,699; Weyerhaeuser Co., Klamath Falls, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,733; Potomac Mine Island Creek Coal Co., Bayard, WV

U.S. imports of coal were negligible in 1992 and 1993.

TA–W–29,727; Navaro Mining, Inc., Bluefield, VA

U.S. imports of coal were negligible in 1992 and 1993.

TA–W–29,788; Gerber Products Co., Inc., Gerber Baby Care, Reedsburg, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,747; Heater Wire, El Paso, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,629; W & F Products, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after March 3, 1993.

TA-W-29,609; Lucas Aerospace Applied Technology Div., City of Industries, CA

A certification was issued covering all workers separated on or after March 24, 1993.

TA-W-29,486; Magnesium Corp. of America, Salt Lake City, UT

A certification was issued covering all workers separated on or after February 14, 1993.

TA-W-29,634; International Women's Apparel, Easton, PA

A certification was issued covering all workers separated on or after February 1, 1993.

TA-W-29,639; Gould Shawmut, Marble Falls, TX

A certification was issued covering all workers separated on or after October 1, 1993.

TA-W-29,630; Dezurik—La Grange, La Grange, GA

A certification was issued covering all workers separated on or after March 9, 1993.

TA-W-29,655; Elkem Metals Co., Ashtabula, OH

A certification was issued covering all workers separated on or after March 22, 1993.

TA-W-29,766; USA Enterprises of Georgia, Conyers, GA

A certification was issued covering all workers separated on or after March 24, 1993.

TA-W-29,802; Western Geophysical Co., Houston, TX

A certification was issued covering all workers separated on or after April 25, 1993.

TA-W-29,686 & TA-W-29,687; Hesteco Manufacturing Co, #1, Elizabeth, PA & Hesteco Manufacturing Co., #4, Hummelstown, PA

A certification was issued covering all workers separated on or after March 24, 1993.

TA-W-29,651; Southern Illinois Oil Producers, Olney, IL

A certification was issued covering all workers separated on or after March 16, 1993.

TA-W-29,588; Cooper Power Industries, Inc., Cooper Power Systems, Cannonsburg, PA

A certification was issued covering all workers separated on or after March 1, 1993.

TA-W-29,748, TA-W-29,749 & TA-W-29,750; Fisher Price, Murray, KY, Medina, NY and East Aurora, NY

A certification was issued covering all workers separated on or after April 5, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00069; Rudolph Miles Personnel, Inc., El Paso, TX

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00089; Lyons Falls Pulp & Paper, Inc., Lyons Falls, NY

The investigation revealed that criterion (3) & criterion (4) were not met. A survey conducted with a sample of customers of Lyons Pulp & Paper, Inc. revealed that respondents either did not import chlorine-free paper from Canada/Mexico or their imports were not an important proportion of the survey sample's business with the subject firm.

NAFTA-TAA-00105; Fruit of The Loom, Osceola, AR

The investigation revealed that criterion (3) and criterion (4) were not met. Employment declines among workers producing long sleeve tee shirts at the Osceola, AR plant resulted from a company decision to consolidate its two-plant production of long sleeve tee shirts at one domestic plant of Fruit of The Loom. Sales for this product line did not decline.

NAFTA-TAA-00090; Kraft General Foods, Avon, NY

The investigation revealed that criterion (3) and criterion (4) were not met. Production of frozen novelty products was discontinued at the subject plant at the end of 1993. A survey conducted with customers purchasing frozen novelty products from the subject firm revealed that customers did not import these products from Canada or Mexico.

NAFTA-TAA-00085; Beaver Dam Products Corp., A Div. of Chrysler Corp., Beaver Dam, WI

The investigation revealed that criterion (3) and criterion (4) were not met. Sales and production increased in 1993 compared to 1992. The subject plant will be closing in 1994. A survey of major customers revealed that customers did not import marine or industrial engines and parts from Canada or Mexico in the relevant time period.

NAFTA-TAA-00087; Howes Leather Co., Ashland Hide Co., Ashland, KY

The investigation revealed that criteria (3) and criteria (4) were not met. The subject firm produced leather for its parent company, Howes Leather Co. Howes Leather Company does not import leather, and a survey of its customers revealed that either customers did not import leather from Canada or Mexico or they relied on imports from Canada/Mexico for a very small proportion of their total purchases during the relevant time period.

NAFTA-TAA-00088; Andrea Manufacturing, Decatur, IL

The investigation revealed that criteria (3) and criteria (4) were not met.

A survey conducted with the manufacturer for whom Andrea Manufacturing produced women's sportswear revealed that the manufacturer did not import women's sportswear from Mexico or Canada or contract work with firms in Mexico or Canada. A survey was also conducted with customers of Andrea's manufacturer revealing that respondents purchasing women's sportswear did not import women's sportswear from Mexico or Canada.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00093; Millinckrodt Medical, Inc., Mallinckrodt Anethesiology, New Athens, IL

A certification was issued covering all workers of Millinckrodt Medical, Inc., Mallinckrodt Anethesiology, New Athens, IL separated on or after December 8, 1993.

NAFTA-TAA-00091; L. Grief Companies, Shippensburg, PA

NAFTA-TAA-00099; The Grief Companies, Lehigh Valley, PA

A certification was issued covering all workers of L. Grief Companies, Shippensburg, PA and The Grief Companies, Lehigh Valley, PA separated on or after December 8, 1993.

NAFTA-TAA-00098; Waynesboro Apparel, Inc., Waynesboro, GA

A certification was issued covering all workers of Waynesboro Apparel, Inc., Waynesboro, GA separated on or after December 8, 1993.

NAFTA-TAA-00106; Viskase Corp., Osceola, AR

A certification was issued covering all workers engaged in employment related to the shirring operations at Viskase Corp., Osceola, AR separated on or after December 8, 1993.

NAFTA-TAA-00081; Allied Signal Safety Restraints, El Paso, TX

A certification was issued covering all workers engaged in employment related to the engineering and quality control stages of production at Allied Signal Safety Restraints, El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00082; Otis Elevator Co., Tucson, AZ

A certification was issued covering all workers engaged in employment related to the purchasing stage of production at Otis Elevator Co., Tucson, AZ separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of May, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 7, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-14409 Filed 6-13-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Documentation Preparation Assistance

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for technical assistance to "Arts Plus" grantees on how to document their activities so that others interested in adapting a project or approach could easily examine and understand the development, results, and impact of the project. It is anticipated that the Cooperative Agreement will result in a documentation preparation handbook. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94-12 in their written request and include two (2) self-addressed labels. verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94-12 is scheduled for release approximately June 28, 1994 with proposals due July 28, 1994.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94-14394 Filed 6-13-94; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

License Termination for the Amax Site, Parkersburg, WV

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination.

This notice is to inform the public that the United States Nuclear Regulatory Commission (the Commission) is terminating the Material License No. SMB-1418 issued to Amax, Inc., for rare earth recovery operations near Parkersburg, WV. On March 24, 1993, the Commission published in the **Federal Register** (58 FR 1588) its intention to terminate the license upon receipt of appropriate closing or conveyance documents from the Department of Energy (DOE). Receipt of the documents will result in the site being transferred to DOE under authority of the Nuclear Waste Policy Act (NWPA) section 151(c). The Amax, Inc. site is listed in the Commission's Site Decommissioning Management Plan.

The Amax, Inc. site is subject to a provision of NWPA that requires DOE to assume title and custody of low-level radioactive waste that originated in the processing of zirconium, hafnium, or rare earth ores. The legislation stipulates that DOE assume title and custody of the site, since the owner of the site requests transfer, the site is "decontaminated and stabilized" in accordance with the Commission requirements, and the owner has made financial arrangements, approved by the NRC, for the "long-term maintenance and monitoring" of the site.

The conditions have been satisfied. The Commission has received notification from DOE that it has assumed custody of the site and that the title to the site has been transferred to the United States of America.

This termination will be reopened only if additional contamination, or noncompliance with the decommissioning plan is found indicating a significant threat to public health and safety. Noncompliance would occur if the licensee had not complied with an approved decommissioning plan or had provided false information.

Dated at Rockville, MD this 8th day of June 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Project Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-14383 Filed 6-13-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would revise the Technical Specification (TS) Surveillance Requirement 4.2.2.1.2, "Power Distribution Limits;" TS Section 5.3.1, "Fuel Assemblies," Administrative TS Section 6.9.1.9.b, "Analytical Methods Used;" and the associated Bases sections. These changes to the TS will allow the Haddam Neck Plant to load up to 5.0 weight percent nominal fuel into the reactor.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendemnt to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Docket Room, the Gelman Building, 2120 L Street, NW., Washington, DC 2055, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 17, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 3rd day of June 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–14384 Filed 6–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corporation; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The proposed amendment would revise the plant Technical Specifications (TS) to change the limit on control rod drop time for 12 control rods from 1.66 seconds to 2.11 seconds. The change would only be in effect for the remainder of the present operating cycle and could be necessary to allow continued plant operation. The reason for the increased drop time for the 12 rods referenced in the licensee's request is buildup of corrosion products in certain portions of the control rod drive mechanisms (CRDMs). The licensee conducted control road testing on June 1, 1994, and removed four CRDMs for inspection to confirm the root cause of the slow drop times.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 248–5100 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it

publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 7th day of June 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–14385 Filed 6–13–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (chapter 35 of title 44, United States Code), this notice announces a request submitted by the Office of Personnel Management (OPM) to the Office of Management and Budget (OMB) for clearance of two information collections: Nonforeign Area Cost-of-Living Allowance Background Survey and Nonforeign Area Cost-of-Living Allowance Price Survey. These information collections will be used for annual living cost surveys and for background surveys that will be conducted approximately once every 5 years to evaluate the program. Selected retail, service, realty, and other businesses and local governments will be surveyed in nonforeign allowance areas and in the Washington, DC, area to obtain living cost data. OPM will use these data to develop cost-of-living allowances as authorized by section 5941 of title 5, United States Code. Approximately 300 establishments will be contacted in the background survey, and approximately 4,000 establishments will be contacted in the price survey. OPM estimates that the survey interviews will take approximately 480 hours annually. For a copy of this proposal call C. Ronald Trueworthy on 703–908–8550.

DATES: Comments on this proposal should be received within 30 days after the date of this notice.

ADDRESSES: Send or deliver comments to:

Allan G. Hearne, Chief, Methodology Development Branch, Salary Systems Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Allan G. Hearne (202) 606–2838, Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–14276 Filed 6–13–94; 8:45 am]

BILLING CODE 6325–01–M

Federal Salary Council; Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. (92–463), notice is hereby given that the thirty-sixth and thirty-seventh meetings of the Federal Salary Council will be held at the times and place shown below. At the meetings the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: July 19, 1994, at 10 a.m.; August 23, 1994, at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14277 Filed 6–13–94; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 21–22, 1994, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9 a.m. on each day in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 94–14395 Filed 6–13–94; 8:45 am]

BILLING CODE 6820–BW–M

RESOLUTION TRUST CORPORATION

Warranted Contracting Officer Program

AGENCY: Resolution Trust Corporation.

ACTION: Notice of availability.

SUMMARY: The Resolution Trust Corporation (RTC) hereby notifies the public that it has revised its program under which only RTC employees designated by the RTC as "warranted contracting officers," or managing agents of savings associations under the conservatorship of the RTC, may execute contracts on behalf of the RTC. The Statement of Qualifications to be, and Authority of, an RTC Warranted Contracting Officer (Statement), is being amended accordingly, and is available for distribution to the public.

ADDRESSES: The Statement may be obtained from the RTC Public Reading Room, 801 17th Street, NW., Washington, DC 20434, phone number (202) 416–6940, fax (202) 416–2076 (These are not toll-free numbers), and from the RTC Public Service Centers: Atlanta PSC, Marquis One Tower, suite 1100, 245 Peachtree Center Avenue, NE., Atlanta, GA. 30303, phone number (404) 225–5069 or (800) 628–4362, fax (404) 225–5081; Dallas PSC, Reverchon Plaza, suite 130, 500 Maple Avenue, Dallas, TX 75219, phone number (214) 443–4860 or (800) 782–4674, fax (214) 443–4875; Denver PSC, 1111 15th Street, Suite 101, Denver, CO 80202, phone number (303) 556–6400 or (800) 542–6135, fax (303) 556–6430; Kansas City PSC, 4900 Main Street, Suite 200, Kansas City, KS 64112, phone number (816) 968–7184 or (800) 365–3342, fax (816) 531–7251; Newport Beach PSC, 4000 MacArthur Blvd., suite 4100, West Tower, Newport Beach, CA 92660, phone number (714) 263–4953 or (800)

283–9288, fax (714) 852–7674; and Valley Forge PSC, 1000 Adams Avenue, Norristown, PA 19403, phone number (215) 650–8500 or (800) 782–6326, fax (215) 650–6168.

EFFECTIVE DATE: The requirements described in this notice became effective on May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Carl Gold, Counsel, RTC Division of Legal Services, (202) 763–0728. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Resolution Trust Corporation Completion Act (RTCCA), Public Law 103–204, was enacted on December 17, 1993. Section 30 of the RTCCA added a new subsection (y) to section 21A of the Federal Home Loan Bank Act, 12 U.S.C. 1441a. Section 30 of the RTCCA provides that a person may execute or modify a contract for goods or services on behalf of the RTC only if the person is a warranted contracting officer appointed by the RTC or a managing agent of a savings association under the conservatorship of the RTC. Section 30 further provides that each such person must provide appropriate certification to parties contracting with the RTC, and that each contract must contain certain notices to the other contracting party regarding the requirements for appointment as a warranted contracting officer and the nature and extent of the warranted contracting officer's or managing agent's authority. Finally, Section 30 provides that any contract that fails to meet these requirements shall be null and void and shall not be enforced against the RTC or its agents by any court.

The requirements to be a warranted contracting officer, and the nature and extent of the contracting authority exercised by any warranted contracting officer or managing agent, are set forth in the publicly available Statement. These may be adjusted from time to time, as published in the RTC's Contract Policies and Procedures Manual (CPPM), the relevant portions of which will be contained in the Statement, which shall also be amended as the parameters are amended.

On January 21, 1994, the RTC published a Notice of Availability in the **Federal Register** [59 FR 3382], in which it summarized the parameters of the warranted contracting officer program as it existed on that date. Subsequently, the RTC has issued Revision 7 of its CPPM, which contains, among other things, revisions to the parameters of the warranted contracting officer program. As revised in Revision 7 of the CPPM, the key points of the program are as follows:

There are three levels of warranted contracting officer, with Level III being the highest. In brief summary, the requirements to be appointed as, and to remain, a warranted contracting officer are a combination of experience, training, and general and specific education. These have been somewhat modified by Revision 7 to the CPPM. The Revised Statement will reflect these modifications. The higher the level, the more stringent the requirements, and concomitantly, the greater authority exercised.

The amounts of authority granted to each level of warranted contracting officer are as follows:

Level I: On a per contracting action basis, to:

a. Execute contracts with total estimated fees up to the limit of Simplified Contracting as defined by Chapter 5 of Revision 7 of the CPPM;

b. Execute task orders with total fees up to $100,000 under pre-established task order agreements;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

d. Execute purchase orders with total estimated fees up to $100,000;

e. Execute contract administrative changes or modifications on contracts with total cumulative value up to $100,000; and

f. Approve invoices for contracts, task orders, purchase orders, or delivery orders for which they have contracting officer responsibility.

Level II: Level II contracting officers now are appointed to Step A, Step B, or Step C.

Level II, Step A contracting officers, when assigned responsibility for a specific contract, have authority to:

a. Execute contracts with total estimated fees (including options) up to $1,000,000;

b. Execute individual task orders with total estimated fees up to $1,000,000;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

d. Execute purchase orders with total estimated fees up to $200,000;

e. Execute changes to contracts, task order agreements, task orders, and contract modifications where the fees for the change or modification result in the modified contract not exceeding $1,000,000;

f. Execute contract terminations with total fees up to $1,000,000;

g. Execute contract claim settlements with payments up to $100,000; and

h. Approve invoices for contracts or task orders for which they have contracting officer responsibility.

Level II, Step B contracting officers, when assigned responsibility for a specific contract, have authority to:

a. Execute contracts with total estimated fees (including options) up to $2,500,000;

b. Execute individual task orders with total estimated fees up to $2,500,000;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts.

d. Execute purchase orders with total estimated fees up to $100,000;

e. Execute changes to contracts, task order agreements, task orders, and contract modifications where the fees for the change or modification result in the modified contract not exceeding $2,500,000;

f. Execute contract terminations with total fees up to $2,500,000;

g. Execute contract claim settlements with payments up to $250,000; and

h. Approve invoices for contracts or task orders for which they have contracting officer responsibility.

Level II, Step C contracting officers, when assigned responsibility for a specific contract, have authority to:

a. Execute contracts with total estimated fees (including options) up to $5,000,000;

b. Execute individual task orders with total estimated fees up to $5,000,000;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

d. Execute purchase orders with total estimated fees up to $100,000;

e. Execute changes to contracts, task order agreements, task orders, and contract modifications where the fees for the change or modification result in the modified contract not exceeding $5,000,000;

f. Execute contract terminations with total fees up to $5,000,000;

g. Execute contract claim settlements with payments up to $500,000; and

h. Approve invoices for contracts or task orders for which they have contracting officer responsibility.

Level III: There are also 3 Steps of Level III warranted contracting officers. The authority of each level is as follows:

Level III, Step A contracting officers have authority to:

a. Execute contracts and task order agreements with total estimated fees (including options) up to $10 million per year for SAMDA asset management, loan servicing, and indemnification of loan servicing; execute all other contracts and task order agreements with total estimated fees (including options) up to $5 million;

b. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

c. Execute purchase orders with total estimated fees up to $500,000;

d. Execute changes to contracts, task order agreements, task orders, and modifications to those documents including changes in the delivery, cost or schedule, where the fees for the change or modification result in the modified contract not exceeding $5 million ($10 million per year for SAMDA, asset management, loan servicing, and indemnification of loan servicing);

e. Execute contract terminations with fees defined in paragraph (a) of this level;

f. Execute contract claim settlements with payments up to $750,000; and

g. Approve invoices up to the limit of their execution authority or the contract value, whichever is less.

Level III, Step B contracting officers have authority to:

a. Execute contracts, task order agreements, and task orders with total estimated fees up to $10,000,000 ($10 million per year for asset management, loan servicing, and indemnification of loan servicing);

b. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

c. Execute purchase orders with total estimated fees up to $10 million;

d. Execute changes and modifications to contracts, task order agreements, and task orders where the fees for the change or modification result in the modified contract not exceeding $10,000,000 ($10 million per year for asset management loan servicing and indemnification of loan servicing);

e. Execute contract terminations with total fees up to $10,000,000;

f. Execute contract claim settlements with payments up to $1,000,000; and

g. Approve invoices up to the limit of their execution authority or the contract value, whichever is less.

Level III, Step C contracting officers have unlimited authority to:

a. Execute contracts including task order agreements;

b. Execute task orders;

c. Execute delivery orders;

d. Execute purchase orders;

e. Execute administrative changes to contracts, task order agreements, task orders, and contract modifications thereof;

f. Execute contract terminations;

g. Execute contract claim settlements; and

h. approve invoices.

These changes affect only contracts for services other than legal services. In addition, no change has been made to the authority of managing agents to contract on behalf of associations under the conservatorship of the RTC.

Warranted contracting officers and managing agents are given a certificate of appointment, showing the level of the warrant. The certificate shall be signed by the RTC's Director, Office of Contract Policy and Major Dispute Resolutions. This certificate or a copy must be presented prior to executing a contract or taking one of the other actions listed above.

Dated at Washington, DC, this 8th day of June 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94-14403 Filed 6-13-94; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

June 8, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Albermarle Corporation
Common Stock, $.01 Par Value (File No. 12518)
CFX Corporation
Common Stock, $1.00 Par Value (File No. 12519)
Emerging Mexico Fund, Inc.
Rights to Subscribe, No Par Value (File No. 7-12520)
NorAm Energy Corp.
Common Stock, $.62 ¼ Par Value (File No. 7-12521)
NorAm Energy Corp.
$3.00 Conv. Exch. Pfd., $.10 Par Value (File No. 7-12522)
Nova Corporation
Common Stock, No Par Value (File No. 7-12523)
Zapata Corporation
Common Stock, $.25 Par Value (File No. 7-12524)
Kenneth Cole Production, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-12525)
Mikasa, Inc.
Common Stock, $.01 Par Value (File No. 7-12526)
Maso-Tech, Inc.
$1.20 Conv. Preferred, $1.00 Par Value (File No. 7-12527)
Beacon Properties Corporation
Common Stock, $.01 Par Value (File No. 7-12528)
Blyth Industries, Inc.
Common Stock, $.02 Par Value (File No. 7-12529)
Freeport McMoran Copper & Gold, Inc.
Pfd. A, $1.25 Cum. Conv. Dep. Pfd., $.10 Par Value (File No. 7-12530)
Glendale Federal Bank
Pfd. E, Non Cum. Pfd. E 8.75%, $1.00 Par Value (File No. 7-12531)
Morgan Stanley Global Opportunities Bond Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-12532)
Grupo Industrial Maseca S.A. de C.V.
American Depositary Shares (each Representing 15 Series B, Common Stock, No Par Value (File No. 7-12533)
Banco O'Higgins
American Depositary Shares (each Representing 6 Shares of Common Stock, No Par Value (File No. 7-12534)
Pennsylvania Enterprises, Inc.
Common Stock, No Par Value (File No. 7-12535)
Tosco Corporation
Pfd. F $4.375 Cum. Conv., $1.00 Par Value (File No. 7-12536)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 29, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-14396 Filed 6-13-94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

June 8, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder

for unlisted trading privileges in the following securities:

Consumers Power Co.
$2.08 Class A Pfd. Cm., No Par Value (File No. 7–12537)
Advocate, Inc.
Common Stock, $.01 Par Value (File No. 7–12538)
Albermarle Corp.
Common Stock, No Par Value (File No. 7–12539)
Alliance Entertainment Corp.
Common Stock, $.0001 Par Value (File No. 7–12540)
American Eagle Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12541)
Beacon Properties Corp.
Common Stock, $.01 Par Value (File No. 7–12542)
Bush Boake Allen, Inc.
Common Stock, $1.00 Par Value (File No. 7–12543
Ceridian Corp.
5.50% Cm. Cv. Dep. Exch. Pfd., $1.00 Par Value (File No. 7–12544)
ConAgra Capital, L.C.
9% Ser. A Cm. Pfd. Sec. (File No. 7–12545)
Cooker Restaurant Corp.
Common Shares, No Par Value (File No. 7–12546)
Crescent Real Estate
Common Stock, $.01 Par Value (File No. 7–12547)
East Group Properties
Shares of Beneficial Interest, $1.00 Par Value (File No. 7–12548)
Financial Security Assurance Holdings Ltd.
Common Stock, $.01 Par Value (File No. 7–12549)
Kemper Strategic Income Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12550)
Rayonier, Inc.
Common Stock, No Par Value (File No. 7–12551)
RJR Nabisco Holdings Corp.
Ser. C Dep. Shs. (rep. 1/10 Sh. Ser. C Cv. Pfd. Stock) ("PERCS") (File No. 7–12552)
Royal Bank of Scotland Group PLC
Exch. Cap. Sec., Ser. A ("X–CAP's") (File No. 7–12553)
Star Banc Corp.
Common Stock, $5.00 Par Value (File No. 7–12554)
Tele Danmark A.S.
American Depositary Shares (rep. 1/2 Class B sh., DKK 10 Par Value) (File No. 7–12555)
Templeton Emerging Markets Appreciation Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12556)
Tricon Capital Corp.
Common Stock, $.01 Par Value (File No. 7–12557)
U.S. Delivery Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–12558)
Banco O'Higgins
American Depositary Shares (rep. 6 shs. Common Stock, No Par Value (File No. 7–12559)
Blyth Industries, Inc.
Common Stock, $.02 Par Value (File No. 7–12560)
Capital Holding LLC
8⅞% Cm. Mthly. Inc. Pfd. shs. ("MIPS") (File No. 7–12561)
Chase Manhattan Corp.
Pfd. Stk. Adj. Rate Ser. N Cum., No Par Value (File No. 7–12562)
Grupo Industrial Maseca, S.A. de C.V.
American Depositary Shares (rep. 15 Ser. B Cm. shs., No Par Value (File No. 7–12563)
Morgan Stanley Global Opportunity Bond Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12564)
Pennsylvania Enterprises, Inc.
Common Stock, No Par Value (File No. 7–12565)
Santa Fe Energy Resources, Inc.
Ser. A Cv. Pfd. Stk. (Div. Enh. Cv. Stk.—"DECS"), $.01 Par Value (File No. 7–12566)
Viacom, Inc.
Class A Stock, $.01 Par Value (File No. 7–12567)
Viacom, Inc.
Class B Stock, $.01 Par Value (File No. 7–12568)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 29, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions unlisted trading privileges pursuant to such applications are of consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14397 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34167; File No. SR–NYSE–93–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Specialist Combination Review Policy

June 6, 1994.

I. Introduction and Summary

On December 3, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new set of guidelines for reviewing combinations among specialist units known as the Exchange's Specialist Combination Review Policy (the "Policy").

The proposed rule change was published for comment in Securities Exchange Act Release No. 33475 (January 13, 1994), 59 FR 3145 (January 20, 1994). No comments were received on the proposal.

The Exchange's current Policy was first approved by the Commission on a six-month pilot basis in 1987.[3] It was subsequently extended and then granted interim effectiveness until such time as the Commission makes a final determination on permanent approval.[4]

The proposed rule change will continue to authorize the Quality of Markets Committee ("QOMC") to review certain proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community. The current combination review policy calls for an Exchange review of a potential combination under a two tier system where the combined unit exceeds any one of the four specified concentration measures.[5] A tier I QOMC review occurs whenever a proposed combination would result in a specialist organization specializing in securities which exceed

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[4] See Securities Exchange Act Release No. 25481 (March 17, 1988), 53 FR 9554 (March 23, 1988).

[5] The concentration measures include specialist share of:

- allocation (*i.e.* designation as registered specialist) for all listed common stocks
- allocation (*i.e.* designation as registered specialist) for the 250 most active listed common stocks
- total share volume of stock trading on the Exchange
- total dollar value of stock trading on the Exchange.

5% of any one of four concentration measures. A tier II review occurs whenever a proposed combination would result in a specialist organization exceeding 10% of any concentration measure. The tier II review differs from the tier I review in that the presumption is against approval of the proposed combination.[6] The proposed new Policy establishes a three tier system of review for combinations. The four concentration measures that trigger a combination review under the various tiers, however, will remain unchanged.

The proposed rule change does not affect the role of the Exchange's Market Performance Committee ("MPC"), acting under delegated authority from the QOMC, of conducting a preliminary review of all proposed combinations to determine the effects of the proposed combination on market quality. If the MPC concludes that the proposed combination will erode significantly market quality, it informs the constituent units of its concern. If the constituent units persist in their plans, the MPC can inform them that some or all of the affected stocks may be put up for reallocation.[7]

II. Description of the Proposal

The proposed rule change modifies the NYSE's mechanism of monitoring the level of concentration within the Exchange specialist community. The proposal establishes a three tier system of review whereby the QOMC will be authorized to review proposed specialist combinations that raise concentration-related issues.

A tier I QOMC review is triggered, both currently and under the proposal, whenever a proposed combination involves or would result in a specialist organization exceeding 5% of any concentration measure.[8] In a tier I review, the QOMC reviews the proposed combination with the following considerations in mind: (a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria: (i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure of the new unit and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies within the resulting specialist organization;

(c) The commitment to the Exchange market, focusing on whether the constituent specialist organizations have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

When a combination involves an entity that is not an existing specialist unit (*e.g.*, if a third party's contemporaneous purchase of two or more units creates a combination exceeding the five percent threshold), the application of the "commitment to the Exchange market" criterion to the non-specialist organization will be based upon an assessment of whether the organization will work to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets.

Moreover, the criterion relating to the "commitment to the Exchange market" under a tier I review is designed to require the QOMC to look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. Specifically, the Committee will review and assess each constituent unit's past conduct on the Exchange relating to such items as:

(a) Participation upon request in the Exchange's FACTS program,[9] in its marketing seminars, in sales calls and in other of its marketing initiatives seeking to attract order flow and new listings.

(b) Acceptance of innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational.

(c) Willingness to apply for allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.

(d) Assistance to other units by providing capital and personnel in unusual market situations, such as "breakouts" and difficult openings.

(e) Efforts at customers' relations with both listed companies and order providers, as evidenced by personal contact, return of telephone calls, prompt resolution of complaints, assessment of customer needs and anticipation of customer problems.

(f) Efforts to streamline the efficiency of its own operations and its competitive posture.

The QOMC will continue to approve or disapprove a particular proposed specialist unit combination based on its assessment of the concentration and other considerations described above. In addition, the QOMC will retain the ability to condition its approval, under any level of review, upon compliance by the resulting specialist organization with any steps specified by the QOMC to address particular concerns in regard to the considerations above.

Once the proposed combination potentially exceeds 10% of any concentration measure, the QOMC will give primary weight to the effect of the proposed combination on the overall concentration of specialist organizations. Moreover, the Policy places an affirmative obligation upon the proponents of the combination to make certain representations regarding the proposed combination in order to obtain QOMC approval. The breadth of the evidentiary showing required depends upon whether the proponents are subject to a tier II or tier III QOMC review.

A tier II QOMC review will be triggered whenever a proposed combination involves or would result in a specialist organization exceeding 10%, up to and including 15%, of any of the four concentration measures. In a tier II review, the burden of proof will then be on the constituent specialist organizations to prove, by a preponderance of the evidence, that the proposed combination:

(1) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets; and

(2) Would foster competition among specialist organizations; and

(3) Would enhance the performance of the constituent specialist organization and the quality of the markets in the stocks; and

(4) Would otherwise be in the public interest.

Absent such a showing, the QOMC will disapprove the proposed combination.

A tier III QOMC review will be triggered whenever a proposed combination involves or would result in

[6] The burden of proof is on the proponents of the combination to show, by clear and convincing evidence, that the proposed combination would not result in undue concentration and would promote competition among the specialist units.

[7] If the proposed combination is under 5%, then the MPC is in effect the governing body and its decision is appealable through the Exchange's rules relating to hearings and appeals. If, however, the proposed combination would exceed one of the thresholds, then the MPC's determination would be taken under advisement by the QOMC in conducting its review pursuant to the Policy; in this case it would be the QOMC's decision that would be appealable. See NYSE Constitution, Article IV, Section 14.

[8] See note 6, *supra*.

[9] The FACTS program is used to introduce member firms and other interested persons to the operations of the Exchange.

a specialist organization exceeding 15% of any of the four concentration measures. In a tier III review, the proponents must present clear and convincing evidence demonstrating that, if approved, the proposed combination would satisfy requirements 1–4 enumerated above.

The proposed rule change defines a "proposed combination" subjected to the Policy to include:

(a) A merger of specialist organizations or an acquisition of one organization by another;

(b) The formation of a joint account involving two or more existing organizations;

(c) The "split-up" of an existing organization (including an organization operating under a joint account) and recombination with another organization;

(d) An individual specialist leaving an existing organization and proposing to take stocks with him to join another existing organization; and

(e) Any other arrangement that would result in previously separate organizations operating under common control.

The NYSE also has informed the Commission of how it intends to address three specific situations involving the purchase of specialist units by an entity other than a specialist firm. First, when a non-specialist entity purchases a single specialist unit, the acquisition will not be reviewable under the Policy regardless of whether or not the specialist unit has a concentration level of 5% or more at the time of purchase. The Policy only applies to combinations of specialist units that involve or would result in a unit exceeding 5%, 10%, or 15% of a concentration measure. Second, if a non-specialist entity proposes to purchase two or more specialist units that, combined into one unit, account for more than 5%, 10%, or 15% of a concentration measure, the acquisition will be reviewable under the Policy. Finally, a non-specialist entity's purchase of two or more specialist units which are kept operationally separate, but when viewed together would cross a 5%, 10%, or 15% concentration measure, will be reviewable under the Policy.[10] In this latter example, the QMOC will seek information as to what the acquiror's intentions are with respect to the specialist units and whether or not a combination is anticipated. In sum, any time a threshold may be exceeded as a direct result of a potential combination made possible by an acquisition, it will be subject to review.[11]

The Exchange has previously stated, with respect to the Policy,[12] that the Policy is designed to provide the Exchange with a mechanism for reviewing proposed mergers, acquisitions and other combinations between or among specialist units that may lead to a level of concentration within the specialist community that is detrimental to the Exchange and the quality of its markets. The Exchange expressed its belief that undue concentration may undermine its agency/auction process, accentuate specialist complacency, and damage the public's perception of the Exchange as a free market environment. Specifically, the Exchange's principal concern from a concentration standpoint was that the transformation of the specialist community into fewer and larger units might vitiate the competition among existing specialist units and present a significant barrier to new entrants to the specialist business, all to the detriment of the competition for the allocation of new listings. In implementing a policy to address these concerns, the Exchange sought to strike an appropriate balance between the perceived harm from undue concentration and the need for some specialist organizations to grow and attract capital through combinations. The instant modification strengthens this balance by adding a middle level of review at which the proponents of the combination are held to a less burdensome standard.

III. Discussion

The Commission recognizes the NYSE's concerns that undue concentration can result in various negative effects on market quality. The Commission also believes that in many situations consolidations among specialist units can be beneficial for the units themselves, particularly for those units with limited capital and resources, as well as for the quality of the market.

The Commission has previously indicated its belief that it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market.[13] Further, the Commission continues to believe the concentration factors identified by the NYSE are adequately designed to result in approval of proposed combinations which will not have an adverse impact on market quality or result in undue concentration, and at the same time will enable the NYSE to identify those combinations that can be potentially harmful to market quality and actually decrease competition.

The Commission has carefully reviewed the NYSE's Policy, placing particular emphasis on its differences with respect to the existing pilot procedure. The Commission previously expressed concern, due to the ability of the NYSE to disapprove proposed combinations based upon their potential concentration effects, as to whether the thresholds identified by the NYSE are appropriate measures of potentially harmful concentration. In particular, the Commission was concerned with the 10% threshold, where the constituent firms would have to overcome the presumption that the proposed combination would result in a level of business harmful to the specialist community.[14] Although the instant Policy retains this presumption, the burden of proof placed upon the proponents under a tier II review is being decreased from a clear and convincing to a preponderance standard. The clear and convincing standard will now only apply to a tier III review. The Commission believes that this intermediary level of review, along with the lower evidentiary standard, will make it less likely that potentially beneficial mergers will be erroneously blocked, consistent with the Act and the goals of the Exchange.

Accordingly, in light of the legitimate concentration concerns the NYSE has identified, the Commission believes that it is consistent with the Act for the NYSE to have a permanent review mechanism for proposed specialist combinations. Further, the Commission believes that the threshold levels identified by the NYSE in the Policy are reasonable in relation to the current distribution of the four concentration measures among specialist units on the NYSE.

[10] The NYSE states that such a review is initiated because of the introduction of the element of common ownership even if the units are to be kept separate.

[11] For example, if a full service broker-dealer bought two specialist units, one with 4% of all allocations and the other with 3%, this would constitute a combination subject to review. Likewise, if a full service broker-dealer that already owned one specialist unit with 7% of all allocations bought another unit having 2% of all allocations, this would be reviewable under the Policy because it is a combination of specialist units crossing the 5% threshold. In contrast, if a full service broker-dealer that had no affiliated specialist unit bought a unit having 11% of all allocations, this purchase would not be reviewable under the Policy.

[12] See Securities Exchange Act Release No. 24411 (April 29, 1987) 52 FR 17870 (May 12, 1987).

[13] See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[14] The Commission notes that to date the NYSE QOMC has only conducted two tier II reviews, both of which have been approved, despite the current high level of burden of proof.

Finally, the Commission notes that the QOMC acts on behalf of the Board of Directors and consists of at least three Directors that are representatives of the public. Currently only one member of the eight-member committee represents a specialist unit. The Commission would be concerned if specialist representation of the QOMC were substantially increased to more than a minor representation by specialists when determining the outcome of a proposed specialist combination, as this could appear to cause a conflict of interest. In such circumstance, the Commission will review this Policy for continued consistency with the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[15] In this regard, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it identifies specific levels of review for combinations that could potentially impair market quality and hinder competition to the detriment of investors and the public interest while ensuring that combinations that are beneficial to the market place will not be prohibited. The Commission also believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act in that it establishes review procedures to prevent undue concentration of specialist units that could potentially hinder market quality. Although the Commission recognizes that the Policy can result in prohibiting certain combinations from occurring, the Commission believes the considerations outlined in the Policy in conducting a combination review under the various tiers will help to ensure that combinations that are beneficial to the market will be permitted, while prohibiting those combinations that may have a negative impact on market quality. Accordingly, any potential burden on competition resulting from the Policy is, in the Commission's view, justified as necessary and appropriate under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–93–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14337 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78f(b) (1988).

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 8, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Hanson PLC

Class B Warrants Expiring 9/30/97 (File No. 7–12569)

This security is listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 29, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14398 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26063]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 7, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 1, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CINergy Corp. (70–8427)

CINergy Corp. ("CINegy"), 139 East Fourth Street, Cincinnati, Ohio 45202, a Delaware corporation not currently subject to the Act, has filed an application-declaration under sections 5, 6(a), 7, 9(a)(1), 9(a)(2), 10, 13(b) and rules 80–91 and 93–94 thereunder.

The application-declaration seeks approvals relating to the proposed combination of Cincinnati Gas & Electric Company ("CG&E"), an Ohio combination electric and gas public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, and PSI Resources, Inc. ("PSI"), an Indiana public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, by which CG&E and PSI's electric public-utility subsidiary, PSI Energy, Inc. ("Energy"), would become wholly owned subsidiaries of CINergy. Following the transaction, CINergy would register with the Commission under Section 5 of the

Act. CINergy also seeks approvals in connection with services to be rendered by CINergy Services, Inc. ("Services"), CINergy's newly formed service company subsidiary, the formation of a new CINergy subsidiary that will hold certain of the CINergy system's non-utility assets, and the issuance of shares of CINergy common stock for CINergy's dividend reinvestment and employee benefit plans.

CG&E and its public-utility subsidiary companies are primarily engaged in providing electric and gas service in the southwestern portion of Ohio and adjacent areas in Kentucky and Indiana.[1] The service area covers approximately 3,000 square miles has an estimated population of 1.8 million, and includes the cities of Cincinnati and Middletown in Ohio, Covington and Newport in Kentucky, and Lawrenceburg in Indiana. As of February 28, 1994, there were 88,458,656 shares of CG&E common stock, par value $8.50 per share, and 3,300,000 shares of CG&E cumulative preferred stock (400,000 of which were redeemed on April 1, 1994) outstanding. CG&E's principal executive office is located in Cincinnati, Ohio. On a consolidated basis, for the year ended December 31, 1993, CG&E's operating revenues were approximately $1.75 billion with consolidated assets of approximately $5.1 billion, consisting of $3.28 billion in electric utility property, plant, and equipment and $504 million in gas utility property, plant, and equipment, and $1.36 billion in other corporate assets.

PSI owns all the issued and outstanding common stock of Energy, an Indiana corporation engaged in the production, transmission, distribution, and sale of electric energy in north central, central, and southern Indiana.[2] Energy services a population of approximately 1.9 million in 69 counties in Indiana. As of February 28, 1994 there were 57,114,573 shares of PSI common stock outstanding. PSI has no shares of preferred stock outstanding. As of February 28, 1994, there were 5,118,335 preferred shares of Energy outstanding. PSI's principal corporate office is located in Plainfield, Indiana. On a consolidated basis, for the year ended December 31, 1993, PSI's operating revenues were approximately $1.1 billion, and its total assets were approximately $2.7 billion, of which $2.2 billion was electric utility plant.

CINergy was incorporated in Delaware on June 30, 1993 to become a holding company over CG&E and Energy following the proposed merger. At present, the common stock of CINergy, which consists of 100 issued and outstanding shares, is owned by PSI and by Tri-State Improvement Company, a wholly owned non-utility subsidiary of CG&E. Each company owns 50 shares.

CINergy Sub, Inc. ("CINergy Sub"), a subsidiary of CINergy, was incorporated under the laws of Ohio on July 1, 1993. The authorized capital stock of CINergy Sub consists of 100 shares of common stock, no par value. CINergy has entered into a subscription agreement for all such shares. No shares of CINergy Sub common stock have been issued. CINergy Sub has and prior to the closing of the proposed merger will have, no operations other than the activities necessary to accomplish the proposed combination of CINergy Sub and CG&E as described below.

Pursuant to an Agreement and Plan of Reorganization, dated as of December 11, 1992, as amended and restated on July 2, 1993 and as of September 10, 1993 ("Merger Agreement"), PSI will be merged with and into CINergy, with CINergy as the surviving corporation ("PSI Merger"), and CINergy Sub will be merged with and into CG&E, with CG&E as the surviving corporation ("CG&E Merger"). As a result of the PSI Merger and the CG&E Merger, CG&E and Energy will become operating subsidiaries of CINergy, and CINergy will be a holding company under section 2(a)(7) of the Act.

Specifically, upon consummation of the proposed transaction: (1) Each issued and outstanding share of CG&E common stock (other than treasury and certain other shares which will be

[1] CG&E wholly owns four public-utility subsidiary companies—The Union Light, Heat and Power Company, an electric and gas subsidiary company, Miami Power Corporation, a subsidiary which owns a 138 kV transmission line, The West Harrison Gas and Electric Company, an electric subsidiary company, and Lawrenceburg Gas Company, a gas subsidiary company. In addition, CG&E owns 9% of Ohio Valley Electric Corp., an electric subsidiary company.

CG&E directly or indirectly owns all the issued and outstanding common stock in five non-utility companies and minority interests in five limited partnerships. Three are direct subsidiaries—Tri-State Improvement Company, a real estate development company formed to acquire and hold property for use in CG&E's utility operations, CGE Corp., formed to hold CG&E's non-utility interests, and KO Transmission Company, used to acquire an interest in an interstate natural gas pipeline.

CGE Corp. has three wholly owned non-utility subsidiaries—Enertech Associates International, Inc. ("Enertech"), CG&E Resource Marketing, Inc. ("Resource Marketing"), and CGE ECK, Inc. ("CGE ECK"). Enertech provides, among other things, consulting, fuel brokering, operation and maintenance services, and demand-side management services worldwide and also pursues investment opportunities worldwide. Resource Marketing holds CG&E's 25% interest in U.S. Energy Partners, a gas marketing partnership that will compete with traditional regulated merchant service and will broker gas to industrial and large commercial customers. CGE ECK holds CG&E's 30–35% interest in a Czech limited liability company which will own and operate a Czech generating facility.

The limited partnerships are North Rhine I Limited Partnership (CG&E has a $300,000 commitment representing a 10.91% limited partnership interest), North Rhine II Limited Partnership (CG&E has a $300,000 commitment representing a 5.61% limited partnership interest), Franciscan Homes II Limited Partnership (CG&E has a $300,000 commitment representing a 2.07% limited partnership interest), Blue Chip Capital Fund (CG&E has a $1 million commitment representing 2.3% of the fund), and Blue Chip Opportunity Fund (CG&E has a $500,000 commitment representing 4.1% of the fund). North Rhine I and II and Franciscan Homes II Limited Partnerships provide low income housing in CG&E's service territory. Blue Chip Capital and Opportunity Funds promote community development through investment in female and minority owned businesses in CG&E territory.

[2] Energy has two subsidiaries, PSI Energy Argentina, Inc. and South Construction Company, a company used to own real estate and interests in real estate which are either not used and useful in the conduct of Energy's business or which have some defect in title which is unacceptable to Energy.

PSI either directly or indirectly owns PSI Argentina, Inc. ("PSI Argentina") and Costanera Power Corp. Through these subsidiaries, PSI is a 10% shareholder of Argelec S.A., a 6% shareholder of Central Costanera S.A., an Argentine electric generating company, and an 8% shareholder in Distrilec Inversora S.A. ("Distrilec"). Distrilec owns 51% of Edesur S.A., an electric distribution system. PSI Argentina also wholly owns an inactive subsidiary, Energy Services Inc. of Buenos Aires, formed to provide operating and consulting services to foreign utilities.

PSI wholly owns three active non-utility subsidiaries, PSI Recycling, Inc. (which recycles material from Energy and other sources), PSI Investments, Inc. ("Investments") (which oversees investments in nonregulated businesses), and PSI Argentina. Investments has two active subsidiaries. Power Equipment Supply Co. (which sells equipment among other things) and Wholesale Power Services, Inc. ("WPS") (which activities include, among others, power brokering, electricity futures, consulting services in wholesale power related markets). WPS, also through a division, formed International Power Exchange, an electronic bulletin board for the bulk power market.

Investments has five inactive subsidiaries—PSI Power Resource Operations Inc. and PSI Power Resource Development, Inc. (which develop, construct, operate, maintain, and own independent power producer/cogeneration projects), PSI Environmental Corp. (which provides environmental services), PSI International, Inc. and PSI Sunnyside, Inc. (both formed to develop, construct, operate, and own cogenerating or power production facilities).

PSI also holds minority interests in five limited partnerships—CID Partnership, L.P. ($350,000 investment at year-end 1993), CID Ventures, L.P. (3.7% interest with a $1 million investment at year-end 1993), CID Equity Capital III, L.P. (a 8.2% interest with a $800,000 investment at year-end 1993), Cambridge Ventures, L.P. (a 7.6% interest with a $250,000 investment at year-end 1993), and Circle Centre Mall (a $1.2 million commitment to be invested in mid-1994 representing a 4.2% interest). CID Equity Partners is a private venture capital partnership dedicated to building successful companies through long-term investments in growing Indiana and other midwestern businesses. Circle Centre Mall is a 700,000 square foot shopping mall under construction in downtown Indianapolis.

cancelled, and shares held by holders who dissent in compliance with Ohio law) will be converted into the right to receive one share of CINergy common stock, par value $.01 per share ("CG&E Conversion Ratio"); (2) each issued and outstanding share of PSI common stock (other than treasury and certain other shares which will be cancelled, and shares held by holders who dissent in compliance with Indiana law) will be converted into the right to receive that number of shares of CINergy common stock obtained by dividing $30.69 by the average closing sale price of the CG&E common stock for the 15 consecutive trading days preceding the fifth trading day prior to the PSI Merger; provided that, if the actual quotient obtained thereby is less than .909, the quotient shall be .909, and if the actual quotient obtained thereby is more than 1.023, the quotient shall be 1.023 ("PSI Conversion Ratio"); (3) the aggregate of all shares of CINergy Sub common stock issued and outstanding prior to the transaction will be converted into the right to receive that number of shares of CG&E common stock equivalent to the aggregate number of shares of CG&E common stock issued and outstanding immediately prior to the transaction; and (4) all shares of capital stock of CINergy issued and outstanding immediately prior to the transaction will be cancelled. Holders of PSI common stock entitled to receive fractional shares of CINergy common stock will receive a cash payment in lieu of such fractional shares. These cash payments will be determined by multiplying the fractional share interest by the average of the last reported sales price per share of CG&E common stock on the consolidated tape for the ten business days prior to and including the last business day on which CG&E common stock was traded on the New York Stock Exchange, without any interest thereon.[3] The outstanding shares of preferred stock of CG&E and Energy will not be affected. CINergy states that the transaction is expected to be tax-free to CG&E, PSI, and Energy shareholders (except as to dissenters' rights and fractional shares). Based on the capitalization of PSI and CG&E on February 28, 1994 and PSI Conversion Ratio of 1.023, the shareholders of PSI and CG&E would own securities representing approximately 40% and 60%, respectively, of the outstanding voting power of CINergy. CINergy states that the proposed merger is a pure stock-for-stock exchange and qualifies for treatment as a pooling of interests.

Following the merger, CG&E's utility subsidiaries will remain subsidiaries of CG&E, the non-utility subsidiaries of PSI will become subsidiaries of CINergy, and the non-utility subsidiaries of CG&E will remain subsidiaries of CG&E. The Merger Agreement provides that CINergy's principal corporate office will be in Cincinnati, Ohio. CINergy's board of directors, which will be classified into three classes, will consist of a total of 19 directors, 10 of whom will be designated by CG&E and 9 of whom will be designated by PSI.

CINergy requests authority to form a new subsidiary ("Holding Company Sub") to hold certain of the CINergy system's non-utility interests. It is anticipated that Holding Company Sub will be incorporated in Delaware, and that its capitalization will consist of 100 shares of common stock, par value $.01 per share, all of which will be issued to, and acquired by, CINergy at a price not more than $1 per share. CINergy expects that Holding Company Sub will acquire all the outstanding capital stock of some or all of the following non-utility subsidiaries: Enertech, Resource Marketing, CGE ECK, PSI Recycling, Inc., PSI Argentia, Power Equipment Supply Company, WPS, PSI Power Resource Development, Inc., PSI Power Resource Operations Inc., PSI Environmental Corp., PSI International, Inc., and PSI Sunnyside, Inc.

CINergy also requests authorizations with respect to the activities of Services, which was incorporated in Delaware on February 23, 1994 to serve as the service company for the CINergy system after the proposed merger. CINergy proposes that Services provide companies in the CINergy system with a variety of administrative, management, and support services. It is anticipated that Services will be staffed by transfer of personnel from the current employee rosters of CG&E, PSI, and their subsidiaries. CINergy states that Services' accounting and cost allocation methods and procedures will comply with the Commission's standards for service companies in registered holding-company systems, and that Services' billing system will use the Commission's "Uniform System of Accounts of Mutual Service Companies and Subsidiary Service Companies." Services' service agreement calls for pre-filing review by state commissions of any amendment to its service agreement. For CINergy's utility subsidiaries, Services proposes to provide services at cost. For CINergy's non-utility subsidiaries, Services proposes that charges be at fair market value and requests an exemption from the "at cost" requirements of section 13(b).

In addition, CINergy requests authority through December 31, 1995 to issue and/or acquire in open market transactions an aggregate amount up to 10 million shares of CINergy common stock for CINergy's shareholder dividend reinvestment, stock purchase plan, stock-based employee benefit plans, and the CG&E and Energy 401(k) plans. CINergy has not finalized its dividend reinvestment plan ("CINergy DRIP") but anticipates that the terms will be the following. All holders of record of shares of CINergy common stock, Energy cumulative preferred or preference stock or CG&E cumulative preferred stock will be eligible to participate in the CINergy DRIP. Full investment of funds will be possible under the CINergy DRIP, subject to a minimum of $25 and a maximum of $100,000 purchase limits. There will be no brokerage or other fees on purchases. All costs of administration of the CINergy DRIP will be paid by CINergy; however, charges will be incurred by participants who direct the plan administrator to sell their shares on withdrawal.

The shares of additional common stock purchased under the CINergy DRIP with optional cash payments and reinvested dividends, if any, may be, in the discretion of CINergy, authorized but unissued CINergy common stock or shares of CINergy common stock purchased on the open market by the plan administrator. CINergy will not change the source of shares of common stock to open-market purchases unless capital needs or market conditions warrant. When purchases of shares of CINergy common stock under the CINergy DRIP come from authorized but unissued shares, the purchase price of such shares will be the average of the high and low prices (computed to four decimal places) of CINergy common stock, as reported in the New York Stock Exchange Composite Transactions section of The Wall Street Journal, for the appropriate investment date, or if no trading in CINergy common stock occurs on such date, the next preceding date on which such trading occurred. When CINergy common stock purchased for each investment date comes from purchases on the open market, the purchase price will be the weighted average price (computed to four decimal places), excluding brokerage commissions, of such shares

[3] Fractional shares of CG&E and PSI common stock held in accounts under the dividend reinvestment plans, the 401(k) savings plans, and the employee benefit plans of CG&E and PSI will be converted into the applicable number of shares (or fractional shares) of CINergy common stock under the corresponding plans of CINergy, CG&E, or PSI, in accordance with the appropriate CG&E or PSI Conversion Ratio.

acquired for the plan. CINergy will pay all administrative costs of acquisition, including brokerage fees and commissions. It is anticipated that there will be no discount program under the CINergy DRIP.

A participant may sell or withdraw all or a portion of his/her shares at any time. Sales of shares through the CINergy DRIP will not be "matched" with other participants' purchases, but will be executed without regard to such purchases. Proceeds from any sale, less applicable brokerage commission, will be remitted to a participant following settlement through the independent agent.

Whether the participant requests to sell the shares in his/her account or elects to receive certificates for the full shares in his/her account, the participant's interest in fractional shares will be paid in cash on the basis of the price paid to the participant for his/her whole shares. A participant will be entitled to request in writing and receive a certificate representing the full shares of CINergy common stock credited to his/her account.

CINergy proposes to use the proceeds from the sale of the newly-issued shares of additional common stock for the repayment of indebtedness, for working capital, or for other general corporate purposes. CINergy will not, however, use such proceeds to acquire the securities of or any interest in any exempt wholesale generators or in any foreign utility company until such time as such investment shall be approved by order or by regulation of the Commission, to the extent such approval is required under the Act.

CG&E and PSI will discontinue their respective dividend reinvestment plans following the consummation of the proposed merger.

CINergy proposes to adopt four stock-based plans—CINergy Stock Option Plan ("Stock Option Plan"), CINergy Emplyee Stock Purchase and Savings Plan ("ESOP"), CINergy Performance Shares Plan ("Performance Plan"), and CINergy Directors' Deferred Compensation Plan ("Directors' Plan"). Although the final terms of these plans have not been established, the anticipated terms are set forth below.

The Stock Option Plan is a plan by which non-employee directors, officers of CINergy or any of its subsidiaries, and employees who are executive employees, employed in a significant executive supervisory, administrative, operational or professional capacity, or who have the potential to contribute to the future success of any participating employer, may be granted incentive stock options, nonqualified stock options, stock appreciation rights and/or cash awards granted in connection with nonqualified stock options to reimburse an optionee for the income taxes imposed upon the exercise of such an option. Each outside director will receive an automatic grant of nonqualified stock option to purchase 12,500 shares of CINergy common stock. This grant vests at the rate of 20% per year beginning with the first anniversary of the date of the grant.

The option price must be no less than 100% of the fair market value of CINergy common stock on the date of the grant. The terms of incentive stock options may not exceed ten years from the date of grant. Each grantee will receive an agreement setting out the terms and conditions of the grant. The Stock Option Plan will be administered by the compensation committee of the CINergy board, which committee will consist of outside directors.

Upon the consummation of the proposed merger, the PSI Stock Option Plan will be merged into the Stock Option Plan.

The ESOP is an employee stock purchase plan in which eligible employees of CINergy and its subsidiaries may be granted options to purchase shares of CINergy common stock. All employees of CINergy or its subsidiaries will be eligible to participate in the ESOP, except part-time employees, employees who have not been employed by CINergy or, in the case of the first offering, by Energy or CG&E, for at least nine months as of the first date of the offering and any full officer of Energy, CG&E, or any other participating employer.

Each offering under the plan consists of an offering period of 26 months. During the offering period, plan participants may make after-tax contributions to a savings account under the plan in an aggregate amount to up to ten percent of the participant's annual base salary multiplied by 26/12ths. Amounts contributed to the savings account will earn interest. The employee may terminate participation at any time, but cannot renew participation prior to a new offering period. At the end of the offering period, a participant may exercise his/her option to purchase shares of CINergy common stock at a five percent discount from the fair market value of the shares on the first day of the offering period, receive the cash held in his/her savings account, or receive a combination of both.

Upon consummation of the proposed merger, the PSI Stock Purchase and Savings Plan will be merged into the ESOP.

The Performance Plan is a long-term incentive compensation plan. Officers of CINergy or any of its subsidiaries, and employees who are executive employees, employed in a significant executive supervisory, administrative, operational or professional capacity, or who have the potential to contribute to the future success of any participating employer, may participate in the plan.

Employees who participate in the Performance Plan will be granted awards payable in a combination of shares of CINergy common stock and cash. The awards will be payable in two equal annual installments following the end of a performance period. Awards will be based on a percentage of a participant's annual base salary and the attainment of the individual, group, and corporate goals established by each participating employer's board of directors.

Upon consummation of the proposed transaction, the PSI and Energy Performance Shares Plans will be merged into the Performance Plan.

The Director's Plan will allow each director of CINergy or any of its subsidiaries to defer fees for serving as a director and to have them accrued either in terms of cash or in terms of theoretical units of shares of CINergy common stock. If deferred in theoretical units of stock, the stock will be distributed to the director at the time he/she retires from the appropriate board. Amounts deferred in cash will be paid at the same time.

Upon the consummation of the proposed merger, the PSI Directors' Deferred Compensation Plan will be merged into this plan. Directors currently participating in that plan will make new elections prior to such time to participate in, and transfer therein deferrals to, the Directors' Plan.

In addition, CINergy proposes to maintain on substantially the same terms, the CG&E and PSI 401(k) plans, except that shares of CINergy common stock will be used instead of CG&E common stock and Energy common stock. The CG&E plans are known as the savings Incentive Plan ("CG&E SIP") and the Deferred Compensation and Investment Plan ("CG&E DCIP") and are mirror 401(k) plans with savings features. All non-exempt full-time employees of CG&E with one year of service are eligible to participate in the CG&E SIP. All full-time exempt employees of CG&E DCIP.

Both the CG&E SIP and the CG&E DCIP accept before-tax and after-tax contributions from employees. Employee contributions are invested according to employee instructions. CG&E matches $.55 per dollar of

employee contributions, through the first five percent of the employee's salary. This match is made solely in CG&E common stock. Shares acquired under the CG&E SIP and the CG&E DCIP are placed at the average high and low price on the New York Stock Exchange on the trading day immediately preceding their acquisition.

Energy has 401(k) plans for all of its eligible employees which allow employees to make both before-tax and after-tax contributions. Eligible employees can save up to 10% of their before-tax eligible compensation and up to 10% of their after-tax compensation. The company matches, in PSI common stock, employees' before-tax contribution in two components: (1) A base match equal to $.70 for every dollar an eligible employee contributes, up to the first four percent of compensation; and (2) a potential incentive match equal to $.10 to $.30 for each dollar contributed, up to the first four percent of compensation. The amount of the incentive match depends on the level of corporate goals achieved.

Shares may be purchased in the open market or may be issued by PSI and are priced based on the closing price of PSI common stock as set forth in the New York Stock Exchange Composite Transactions section of the *Wall Street Journal* for the date on which the contributions are invested.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14399 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Plans for Establishment of Land Transportation Standards Subcommittee

AGENCY: Office of International Transportation and Trade, Office of the Secretary, Department of Transportation.

ACTION: This notice announces the Department of Transportation's (DOT) plans for establishing the Land Transportation Standards Subcommittee (LTSS) required in the North American Free Trade Agreement (NAFTA). It also describes the LTSS' scope of work, notifies the public of upcoming meetings, and invites interested parties to write to DOT, by July 20, 1994, to be included in the Department's distribution list for LTSS reports and related information.

SUMMARY: The United States, Canada, and Mexico intend to work to develop more compatible land transportation standards through the LTSS in accordance with a timetable set in the NAFTA. Five working groups of federal and state government technical experts from the three countries will accomplish this work under the direction of the LTSS. While the working groups will be comprised of government officials only, the U.S. delegation to the LTSS will include federal and state government officials, as well as representatives from industry, labor, and safety advocacy groups. The LTSS is scheduled to hold its first plenary session on July 12, 1994, in Cancun, Mexico. Several working groups may meet on July 11, 1994 at the same location. Agendas for the meetings are yet to be determined. In the future, the Department intends to publish in advance the schedules and agendas for LTSS and working group meetings, and to distribute regularly relevant information to individuals and organizations on its mailing list. Public briefings will also be scheduled as appropriate to provide updated information. Respondents are requested to send a post card with their full names and addresses to DOT, specifying the group(s) about which they would like to receive information.

BACKGROUND: The NAFTA establishes a Committee on Standards-Related Measures, and requires that it create a subcommittee to seek, to the extent practicable, compatibility of land transportation standards among the United States, Canada, and Mexico. Annex 913.5.a–1 of the NAFTA sets forth the work program that the LTSS will follow for seeking compatibility of the countries' standards-related measures for bus and truck operations, rail personnel standards that are relevant to cross-border operations, and the transportation of hazardous materials.

Land Transportation Standards Subcommittee: The LTSS will meet once a year chaired, on the U.S. side, by the Director of the Office of International Transportation and Trade, Office of the Secretary of Transportation. The chair will give general guidance and direction to U.S. working group heads, establish the parameters for participation of U.S. delegates in delegation and trilateral meetings, and prepare policy recommendations for the Secretary of Transportation's consideration. U.S. participants to the LTSS will include: (1) Federal officials from the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Research and Special Programs Administration (RSPA), the U.S. Department of State, the Office of the U.S. Trade Representative, and other federal agencies as appropriate; (2) state policy-makers identified by the National Governors' Association; (3) trade association representatives for the truck, bus, and rail industries, shippers transportation labor unions, brokers, and shippers; and (4) public safety advocates.

Working Groups: Five working groups, comprised of federal, state, and provincial officials from the three countries, will be established. In the United States, each working group will operate under the leadership of a DOT official. By invitation, representatives of state government organizations such as the Association of American Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance, the International Association of Chiefs of Police, the National Association of State Regulatory Utility Commissioners, the Cooperative Hazardous Materials Enforcement Development Program, and others may also be part of the U.S. delegation. Individual working groups will determine the frequency of meetings depending on the scope of work and the time-frame established in the NAFTA for seeking compatibility for the specific standards under each group's jurisdiction. The groups and chairs are listed below.

1. Working Group 1—This group will consider medical and non-medical standards-related measures for drivers, including age and language requirements. It will also review measures with respect to vehicles such as tires, brakes, parts and accessories, cargo securement, maintenance and repair, inspections, and emissions and environmental pollution levels not covered by the Automotive Standards Council's work program established under Annex 913.5.a–3 of the NAFTA. In addition, the group will examine standards related to the supervision of motor carrier safety compliance. For information call Tom Kozlowski, Chief, Standards Development Division/ FHWA, at (202) 366–2981.

2. Working Group 2—This group will analyze the development of more compatible vehicle weights and dimensions standards. For information call Susan Binder, Chief, Office of Industry and Economic Analysis/ FHWA, at (202) 366–9230.

3. Working Group 3—This group will be responsible for seeking compatibility of standards-related measures relating to

road signs. For information call Rudolph Umbs, Acting Chief, Safety Management Division/FHWA, at (202) 366–0411.

4. Working Group 4—This group will consider compatibility of standards related to rail operating personnel that are relevant to cross-border operations, and standards related to locomotives and other rail equipment. For information call Jane Bachner, Director, Office of Economic Analysis/FRA, at (202) 366–0344.

5. Working Group 5—This group will be responsible for seeking compatibility of standards related to the transportation of hazardous materials. For information call Frits Wybenga, International Standards Coordinator for Hazardous Materials/RSPA, at (202) 366–0656.

MEETINGS: The LTSS is scheduled to meet for the first time in plenary session on July 12, 1994, in Cancun, Mexico. Several working groups may also meet at the same location on July 11, 1994. Agendas for the July sessions are not immediately available, but may be obtained by calling the individuals listed on this notice the week of June 27. Schedules and agendas for future meetings will be published in advance.

FOR FURTHER INFORMATION: Contact David DeCarme, Chief, Maritime and Surface Division, Office of International Transportation and Trade, Office of the Secretary of Transportation, at (202) 366–2892.

ADDRESS AND DEADLINE: Individuals and organizations interested in being placed on the mailing list for receiving LTSS-related information are requested to send, by July 20, 1994, a post card indicating the complete name and address where the information should be sent, and specifying the group or groups about which information is desired. Mail post cards to David DeCarme, U.S. Department of Transportation, OST/X–20, room 10300, 400 Seventh Street SW., Washington, DC 20590.

Dated: June 9, 1994.

Arnold Levine,

Director, Office of International Transportation and Trade.

[FR Doc. 94–14392 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 8, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550–0023

Form Number: OTS Form 1313; Monthly Cost of Funds Survey Systems Worksheet; Officer's Certification

Type of Review: Extension

Title: Thrift Financial Report (TFR)

Description: The Office of Thrift Supervision (OTS) collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of the general public. The OTS monitors financial positions and interest-rate risk so that adverse conditions can be remedied promptly. The respondents are savings associations.

Respondents: Businesses or other for-profit, savings institutions

Estimated Number of Respondents/ Recordkeepers: 1,788

Estimated Burden Hours Per Respondent/Recordkeeper: 20 hrs. 41 mins.

Frequency of Response: Monthly, quarterly

Estimated Total Reporting/ Recordkeeping Burden: 365,215 hours

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 94–14410 Filed 6–13–94; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Convention on Cultural Property Implementation Act (Pub. L. 97–446); Import Restriction on Archaeological Material of the Moche Period From the Sipan Archaeological Region, Peru

AGENCY: United States Information Agency.

ACTION: Determination to Extend Emergency Restriction on Moche Material from the Sipan Archaeological Region, Peru.

Pursuant to the authority vested in me under Executive Order 12555 and Delegation Order No. 86–3 of March 18, 1986 (51 FR 10137),

I find:

Pursuant to the requirements of section 304(c) (3) of the Act, 19 U.S.C. 2603(c)(3), with respect to the extension of an emergency import restriction on Moche artifacts from the Sipan Archaeological Region, Peru, and pursuant to the emergency provisions under section 304, subsections (a)(2) and (a)(3); and pursuant to a unanimous favorable recommendation from the Cultural Property Advisory Committee,

(1) That the material is archaeological and is identifiable as coming from sites in the Sipan Archaeological Region, an area recognized to be of high cultural significance, for it contains evidence of the Moche culture at the apogee of its development; that an ambience conducive to further pillage continues to exist in this region causing continued jeopardy from pillage, dismantling, dispersal, or fragmentation which is, of threatens to be, of crisis proportions;

(2) That the material is part of the remains of the Moche culture (approximately A.D. 100–800) which did not develop a writing system and about which little is known except from scientific excavation of intact remains; that an ambience conducive to further pillage continues to exist relative to these remains of the Moche culture, the record of which continues to be in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions;

(3) That the application of the import restriction set forth on a temporary basis would continue, in whole or in part, to reduce the incentive for pillage, for it has been established that the emergency import restriction in place since 1990 has resulted in a diminution to systematic clandestine pillage of the sites in the Sipan Archaeological Region.

Determination

Therefore, in accordance with the aforementioned authority vested in me, and pursuant to section 304(c)(3) of the Act, 19 U.S.C. 2603(c)(3), and consistent with a favorable recommendation from the Cultural Property Advisory Committee, I determine:

(1) That the emergency condition continues to apply with respect to Moche artifacts from the Sipan Archaeological Region in the Lambayeque Valley of northern Peru.

(2) That the emergency import restriction that went into effect on May 7, 1990, is extended for a period of three more years effective June 15, 1994.

Dated: June 9, 1994.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 94–14458 Filed 6–13–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 113
Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 20, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14580 Filed 6–10–94; 3:10 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–20]

TIME AND DATE: June 20, 1994 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future.
2. Minutes.
3. Ratification List.
4. Inv. No. 303–TA–25 (Preliminary) and Inv. No. 731–TA–700–701 (Preliminary) (Disposable Lighters from China and Thailand)—briefing and vote.
5. Outstanding action jacket: None.

In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: June 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14551 Filed 6–10–94; 2:41 pm]

BILLING CODE 7020–02–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, June 21, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6167A—Railroad Accident Report: Derailment of Amtrak Train 2, the Sunset Limited, on CSXT Big Bayou Canot Bridge, Mobile, Alabama, September 22, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 10, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–14498 Filed 6–10–94; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 13, 20, 27, and July 4, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of June 13

Thursday, June 16

10:30 a.m.
Discussion of Personnel Matters (Closed—Ex. 2 and 6)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on "Timeliness in Decommissioning of Materials Facilities" (Tentative)
(Contact: Mary Thomas, 301–492–3886)
b. Motion to Quash OI Subpoenas Issued to Henry Allen, Diane Marrone, and Susan Settino in the Five Star Products Investigation (Tentative)
(Contact: Charles Mullins, 301–504–1606)

Week of June 20—Tentative

Monday, June 20

10:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 27—Tentative

There are no meetings scheduled for the Week of June 27.

Week of July 4—Tentative

Thursday, July 8

11:30 a.m.
Affirmation/discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: June 9, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–14543 Filed 6–10–94; 12:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 13, 20, 27, and July 4, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 13

Thursday, June 16

10:30 a.m.
Discussion of Personnel Matters (Closed—Ex. 2 and 6)

Friday, June 17

2:45 p.m.
Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule on "Timelines in Decommissioning of Materials Facilities" (Tentative)
(Contact: Mary Thomas, 301–492–3886)
b. Motion to Quash OI Subpoenas Issued to Henry Allen, Diane Marrone, and Susan Settino in the Five Star Products Investigation (Tentative)
(Contact: Charles Mullins, 301–504–1606)

Week of June 20—Tentative

Monday, June 20

10:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 27—Tentative

There are no meetings scheduled for the Week of June 27.

Week of July 4—Tentative

Thursday, July 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 504–1661.

Dated: June 10, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–14567 Filed 6–10–94; 2:41 am]

BILLING CODE 1590–01–M

federal register

Tuesday
June 14, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Gaming Compact Between the Chitimacha Tribe of Louisiana and the State of Louisiana, which was executed on May 16, 1994.

DATES: June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: June 3, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–14322 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
June 14, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Notice of Funding Availability for Preservation Support Grants and Notice of Paperwork Submission

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3762; FR–3613–N–01]

NOFA for Preservation Support Grants and Notice of Paperwork Submission

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability and paperwork submission.

SUMMARY: This NOFA announces the availability of up to $6 million in funding for Preservation Support Grants, to promote the ability of residents of eligible low-income housing to: (1) Participate meaningfully in the preservation process established by the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA); and (2) affect decisions about the future of their housing. This NOFA also serves to assist the Secretary in discharging the obligation to notify qualified purchasers of the availability of properties for sale and otherwise facilitate the coordination and oversight of the preservation program. A portion of the unobligated funds from the Preservation Technical Assistance NOFA published September 3, 1992 (57 FR 40570), is made available under this NOFA.

Eligible applicants may apply for a Preservation Support Grant in one of two categories. First, Outreach and Training Grants are available to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing to conduct community-, city-, or county-wide outreach to identify, organize, and deliver training to residents of eligible low-income housing. Second, Preservation Activity Grants are available to State and local government agencies and nonprofit intermediaries to perform activities that further the preservation program in their jurisdictions. These activities may include outreach, training, and organizational development of unorganized tenants. In a separate NOFA, the Department has solicited applications from intermediaries to administer direct technical assistance grant funds to resident and community groups (FR–3473, published April 6, 1994, at 59 FR 16366).

This document includes information about eligible applicants, the level of funding available, and HUD's processing of applications, as well as the selection criteria for grant applicants.

DATES: The expedited deadline for submission of comments on the paperwork burden associated with this NOFA is: June 24, 1994.

The deadline for submission of applications is August 15, 1994. Applications must be physically received in the Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410, by 4:30 p.m., EST, on or before the due date.

ADDRESSES: Comments on the information collection requirments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Upon request, Preservation Support Grant application packages may be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone number: 1–800–955–2232. Please refer to FR–3613 when requesting an application package.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Preservation and Property Disposition, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3555. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300. (Except for the TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted, for expedited processing, to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Any applicant that completes an application before the OMB control number is assigned may have to modify that application in accordance with changes in the application package that are requested by OMB and agreed to by HUD.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, by June 24, 1994, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Introduction

On July 13, 1993, the Department published a draft Notice of Funding Availability (58 FR 37819), specifically inviting public comments on the Department's proposed methodology for implementing the provisions of section 312 of the Housing and Community Development Act of 1992 (1992 HCDA), which added sections 251–257, the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). The comment period expired on August 28, 1993. The Department received a total of 26 comments. Two comments were from legal/advocacy organizations, eight from low income housing organizations which are involved in development of and advocacy for affordable housing, nine were from tenant organizations, three were from community development corporations, two from community service organizations, one from a local agency and one from an individual housing consultant.

This NOFA addresses section 254 of LIHPRHA. Comments received relating to the other added sections were addressed in an earlier NOFA directed at those sections and published on April 6, 1994 (59 FR 3473). The first section of this NOFA is a discussion of the public comments on the section 254 aspects of the draft NOFA and of modifications made in response to the comments and as a result of additional HUD consideration. The actual NOFA follows the discussion of public comments and begins with the section

designated "II. Purpose and Substantive Description."

I. Public Comments

A. Priorities

Five commenters recommended that local resident-controlled groups with experience in organizing receive highest funding priority. The rationale behind these comments was that assistance to organize by a tenant-led coalition at the local level enables tenants to share experiences and provide peer support. Also, one commenter stressed that organizing and training sponsored by local tenant coalitions protect against "sham" nonprofit purchasers. The Department agrees with these comments and is giving preference to local resident-controlled groups. Organizations that receive Outreach and Training grants are required to demonstrate that they have at least two years experience in resident organizing and education. Under the Preservation Activity Grant category, the Department also will give priority consideration to State and local government agencies and intermediaries that propose to provide outreach and training and organizational development to unorganized tenants.

One commenter suggested that in awarding Outreach and Training grants, HUD should give priority to the local nonprofit entity most trusted or most likely to be trusted by the tenants. Factors cited by the commenter that could be used as a measure of trust included languages spoken by staff, ethnicity, positive history in the immediate neighborhood, and whether the nonprofit entity has a rural/urban/suburban focus. The Department believes that establishing a trusting relationship between recipients and providers of the activity is an important aspect of a program. However, assessing the level of trust is judgmental and requires an insight about the relationship between a nonprofit organization and tenants that would be difficult for HUD staff to readily discern. The Department believes that a trusting relationship will evolve when the parties become acquainted, begin to work together, and plan successful programs.

Two commenters suggested that under the Outreach and Training grants, organizing should be given priority over education and training. However, if the purpose of the application is to provide training, one commenter suggested that preference should be given to applicants planning training for resident groups and community-based nonprofit purchasers (as opposed to owner entities, appraisers, and financial institutions), because resident groups and community-based nonprofit purchasers generally have fewer resources. Also, it was suggested that this preference be implemented through a point system published in the NOFA. Under the Outreach and Training grant category, HUD will require that successful applicants restrict provision of training to resident groups and community-based nonprofit purchasers. However, under the Preservation Activity Grants category, grantees may use funds to train and educate other groups, such as appraisers, financial institutions, and owners.

B. Allocation of Funds

The Department received eleven comments recommending that a majority of the Preservation Support Grant funds be set aside for resident outreach and training that would involve leadership development, training, and ongoing support instead of for the provision of information on LIHPRHA and ELIPHA (without organizational development, training, and support). Eight commenters suggested that, at a minimum, 60 percent of the funds should be reserved for outreach and training. Another commenter advised that the Department allocate 50 percent for each type of Preservation Support Grant, with a mid-year review for reallocation.

The Department will allocate 50 percent of the Preservation Support Grant funds to Outreach and Training grants and 50 percent to Preservation Activity grants. This equal division of the allocation will maximize opportunities for the Department to produce newly organized tenant groups, because HUD will give preference, under the Preservation Activity grant program, to State or local government agencies or intermediaries that submit applications for outreach and training and the organizational development of tenants. By including outreach and training and organizational development for tenants as preferred activities under Preservation Activity grants, the Department will be able to ensure that unorganized tenants will be reached if they live in areas where eligible local tenant controlled groups or community-based nonprofit organizations do not exist.

One commenter suggested that Outreach and Training grants be allocated in the $50,000 to $150,000 range annually for up to three years. The Department agrees that grant amounts should be limited. The Department will award Outreach and Training grants commensurate with the scope and size of the market served and the level of outreach and training described in the application. The maximum amount an applicant may receive for an Outreach and Training grant will be $150,000 annually, up to a maximum, if warranted, of $450,000 over a three-year period.

The Preservation Activity grant will be available for, among other activities, outreach and training and organizational development for tenants who live in areas where community-based nonprofit organizations or local resident-controlled groups do not exist. Because applicants applying for Preservation Activity Grants may propose an activity that is regional or national in scope and that would require a high level of funding to be effective, the Department believes that the maximum amount an applicant may receive for a Preservation Activity Grant should be $500,000 for proposals that are national in scope, and $250,000 for proposals aimed at the regional, State or local level. This NOFA addresses funding levels in detail for each category in Section II.D.

Two commenters stated that HUD should have two funding rounds annually for Preservation Support Grants, with one-year grant awards renewable for up to three years. The Department has determined that the size of Preservation Support Grants does not merit the task of scoring, ranking, and awarding grants biannually; it is more cost-effective to announce the availability of funds on an annual basis. Further, Preservation Support Grants are awarded on a competitive basis and cannot be renewed without a new round of competition. However, HUD will accept Outreach and Training grant applications that propose activities designed to be completed over a three-year period. Such proposals, if funded, would receive incremental funding as described in Section II.C of the NOFA.

Six commenters claimed that basing fund allocation solely on active Notices of Intent (NOIs) and Plans of Action (POAs) is skewed because this basis does not directly correlate with preservation sales activity. Another commenter claimed that HUD's records are not fully accurate because the basis for the allocation is program volume—specifically, the sum of "active Notices of Intent plus the number of Plans of Action submitted for the State"—so allocations may be distorted. HUD will allocate grant funds in accordance with the selection process described in Section IV of this NOFA. The number of active Notices of Intent and Plans of Action will not be the determining factor.

Another commenter stated that the allocation under this NOFA should be made according to eligible projects, not by activity level. However, HUD will award grants based on proposed activities, not according to eligible projects. The commenter further stated that the allocation should include transition rule project owners who have not filed an NOI. This comment relates to Title II projects, where owners were not required to file NOIs prior to the 1992 HCDA. Such projects will be eligible under the provisions of this NOFA.

C. Eligible Activities

One commenter suggested that organizations applying for Preservation Activity Grants should not be limited by the definition of eligible intermediaries in the NOFA. The commenter claimed that preservation activities, such as LIHPRHA training, technical assistance, data gathering, and clearinghouse functions, can be performed by an organization that does not have experience in grant allocation and administration and has not previously served a wide geographic area. Community-based nonprofits with experience in education on LIHPRHA and ELIPHA, for example, would be competent to perform these activities. The Department will limit eligibility for Preservation Activity Grants to eligible intermediaries and will adhere to the definition of intermediary used in the July 13, 1993, NOFA, because it is consistent with section 255(d) of the 1992 HCDA.

This commenter also stated that while preference should be given to locally based groups, it should be possible for community-based groups to apply for resident outreach and training grants for a multicounty area, if a local group is not available. The Department agrees and has indicated in Section III.C of the NOFA that priority will be given to established local resident-controlled groups. Next in order of preference will be established community-based nonprofit organizations, and, thirdly, city-wide, county-wide or multi-county coalitions of resident groups applying for Outreach and Training Grants. Further, community action, legal service, and fair housing counseling agencies; State and local government agencies; and intermediaries that apply for Preservation Activity Grants to initiate outreach and training and the organizational development of tenants will receive priority funding under that category.

This commenter also stated that organizations should be able to do both resident organizing and preservation activities, and that the eligible activities should include legal and financial research on properties. The Preservation Activity Grants, which will provide funding for legal and financial research studies on eligible properties, also will include outreach and training and organizational development training for tenants as an eligible and priority activity. If all funds are not awarded to eligible applicants in one grant category, the Department will utilize unused funds from one grant category to fund acceptable applications for the other, as indicated in Section III.A of the NOFA.

Four commenters suggested that the Department clarify that Outreach and Training Grants are available to support residents in projects where the owner is not selling. Two commenters want Outreach and Training Grants available where an owner has made no decision yet, but is eligible under ELIPHA or LIHPRHA. The Department agrees, and has stated in Section III.D of this NOFA, that eligible projects include any Preservation property, regardless of whether an owner has filed a Notice of Intent.

A commenter proposed that HUD fund the production of information materials, such as pamphlets, posters, displays, and videos that can be used for resident outreach and training. The commenter said that some of these materials already exist, having been produced in States with a high level of activity. However, HUD could make them widely available to assistance providers. This would avoid potentially duplicative efforts nationwide and will assure distribution of accurate information. The Department accepted this proposal and has included a provision under the Preservation Activity Grant program for creating informational materials about the Preservation process for nationwide distribution as an eligible activity. (See Section III.F of the NOFA for further details.)

D. Other

Nineteen commenters stated that because of the size of the Outreach and Training Grant program, and because the activities should be nonproject specific, HUD should administer that program. The Department agrees and will administer the awarding and monitoring of both categories of the Preservation Support Grants program.

One commenter recommended that the Department eliminate the set-aside for Preservation Support Grants and allow intermediaries to apply for an amount up to the entire State allocation to be used for Direct Assistance or Preservation Support Grants, with a maximum of $60,000 for training, outreach, and preservation activities. Beyond that, the commenter suggested that intermediaries be allowed to propose activities most appropriate for their jurisdictions. The law provides for two separate grant categories under Preservation Support Grants and identifies specific purposes for each one. The intent of the statute is to allow interested resident groups an opportunity to participate in the preservation process. While the point raised here is valid, the Department must adhere to the specifics of the law. Also, the opportunity for a resourceful resident-controlled group, which may have access to other supplemental funds to combine with a HUD award to organize and educate tenants, should not be thwarted by the elimination of the set-aside for Preservation Support Grants.

One commenter said that HUD should change the Outreach and Training applicant definition to include a network of advocacy people or other qualified organizations, not just resident-controlled or resident-based nonprofits. They stressed that the requirement that the applicant be a resident-controlled or community-based group was too restrictive and would prohibit certain tenant groups from participating in the preservation process. They further questioned the need for the applicant's board to be resident-controlled and recommended that the requirement be deleted. The Department appreciates the concerns expressed; however, the requirement is statutory and cannot be deleted.

One commenter proposed that the NOFA add criteria to ensure that each community-based organization applicant has an established mechanism to guarantee responsiveness to tenants. The Department rejects this suggestion because it believes it would be a burdensome requirement and difficult to implement and measure. The same commenter suggested that tenants and other organizations working on these issues in the community also should have a chance for input on the application and award. The Department disagrees with this comment. It is unclear how and when the commenter intended that tenants and other organizations would comply with this requirement. Also, it is illegal for HUD to disclose advance information about the applicants in a competitive grant process.

Finally, this commenter suggested that HUD, as grant administrator, should provide notice of the application to all nonprofit and tenant organizations working on preservation in the relevant

jurisdiction and to national and regional groups, and that there should be a limited time period for other qualified groups to submit a competing application. The Department believes that this recommendation will delay decisionmaking and create excessive administrative burdens. However, under section 102 of the HUD Reform Act, HUD will publish the names of the recipients of assistance under this NOFA in the **Federal Register**.

One commenter stated that this NOFA should have similar accountability language in Outreach and Training Grant applications as in the Direct Assistance Grant applications. The Department has modified the language defining eligible applicants for Outreach and Training Grants and Preservation Activity grants. The eligibility requirements now reflect accountability similar to that expected of Direct Assistance Grant applicants.

Three commenters stated that because the best Outreach and Training providers will not always be local entities and the statute requires local entities, the NOFA should be clear that Preservation Activity Grants should be available for Outreach and Training by regional/statewide providers. The commenter added that Statewide organizations should be eligible to receive Outreach and Training grants where there is a lack of local activity.

The Department is limiting applicants applying for Outreach and Training grants to local resident-controlled, community-based, city-wide, county-wide, or multi-county providers, which is consistent with the statute. However, community action, legal service, and fair housing counseling agencies; State or local government agencies; and local, regional, State, and national intermediaries can apply for a Preservation Activity Grant to conduct outreach and training and organizational development training for tenants where no local resident-controlled group or community-based organization exists. With respect to awards made under this category, the Department will give preference to eligible regional, State, and local intermediaries over national nonprofit organizations.

Three commenters stated that HUD should more clearly define what are eligible activities for State and local governments and nonprofit intermediaries using Preservation Support Grants. In addition, commenters suggested that the term "deemed appropriate" should be clarified. Another commenter stated that the NOFA should contain a broader list of specific activities or examples of "other activities" that further the intent of the preservation programs. The Department agrees with this comment and, in Section III.F of the NOFA, has clarified and broadened the list of eligible activities for Preservation Activity grants.

One commenter offered that HUD should clarify that resident-controlled and community-based nonprofits are treated equally. Three commenters stated that an overwhelming majority of funding for Preservation Support Grants should be made available to resident-controlled organizations. The Department is giving priority to local resident-controlled groups that apply for Outreach and Training grants, because the statute clearly indicates tenants/residents as the intended beneficiaries of this assistance. In cases where no experienced local resident-controlled group or community-based nonprofit organization exists, or where one exists, but does not apply or has applied, but its application was disapproved, then community action, legal service, and fair housing counseling agencies; State and local government agencies; or national nonprofit intermediaries may apply for a Preservation Activity Grant and receive priority consideration to conduct outreach and training and organizational development of the tenants.

Five commenters stated that HUD should give preferences to Outreach and Training applicants in the following order: applicants in which the decisionmaking body is made up entirely of HUD-assisted residents, those with a majority of HUD-assisted residents, those with a majority of low-income community members, community-based applicants, and regionally based applicants. Organizations with no direct experience should be acceptable where there is no other applicant. One commenter stated that HUD should spell out a clear priority to maximize funds to resident-controlled coalitions. Another commenter said that priority should be for groups with at least three years of organizing experience demonstrating board and staff accountability to resident groups. The Department will give preference for Outreach and Training grants to local resident-controlled groups with at least two years of organizing experience. The priorities will be reflected in the rating process described in Section IV.C of the NOFA.

One commenter said that Outreach and Training grants should be reviewed and selected separately from Preservation Activity grants, with separate allocations. The Department agrees and has developed a separate selection process for each of the Preservation Support Grant categories. This commenter also recommended that intermediaries administering Direct Assistance Grants should also be able to apply to do Other Purpose activities; this is especially important in geographic areas where there are not many experienced entities.

Intermediaries that are eligible to apply to administer Direct Assistance Grants are also eligible to apply for Preservation Activity grants. However, intermediaries selected to administer Direct Assistance Grants, by statute, "may not provide other services to grant recipients that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved." Therefore, administering intermediaries may not also apply to perform outreach and organizational development activities for resident groups that may receive technical assistance funds through the Resident Capacity or Predevelopment Grants that the intermediary is administering.

Another commenter contended that potential purchasers should be able to receive these grants when no other qualified applicant has expressed an interest in the activity. In other words, potential purchasers would be considered grantees of last resort. The Department believes that the statute clearly identifies eligible applicants for Preservation Support grants; the program is not opened to potential purchasers.

Two commenters stated that Outreach and Training recipients should not be able to seek an ownership interest in the project. They claim that such a policy would avoid conflicts of interest with potential landlords, while enabling residents to organize independently. The Department agrees with this comment and believes that such a policy would restrict grantees from also benefitting as potential purchasers who could receive a direct assistance grant, and certain incentives under ELIPHA or LIHPRHA, thereby becoming a double recipient of HUD's Preservation program.

One commenter stated that HUD should allocate unused funds from the 1992 NOFA according to the 90/10 percent formula: i.e., 90 percent to Direct Assistance Grants and 10 percent to Preservation Support grants. Another commenter suggested that HUD clarify the exact amount of funds available from the 1992 NOFA and how they will be divided. The Department has divided the allocation of unused funds from the 1992 NOFA according to the 90/10 percent formula: 90 percent to

Technical Assistance Grants and 10 percent to Preservation Support Grants.

Three commenters said that more of the unused funds from the 1992 NOFA should be available for Outreach and Training Grants. Another suggested that all unobligated 1992 NOFA funds be allocated to Outreach and Training grants. The Department will allocate the portion of the unused 1992 NOFA funds designated for Preservation Support Grants using a 50/50 percent formula: 50 percent for Outreach and Training grants and 50 percent for Preservation Activity grants. Again, the reason for the equal allocation is to allow the Department to maximize the level of assistance to, and expand the number of, newly organized tenant groups, through the provision of outreach and training and organizational development under Preservation Activity grants. One commenter also suggested that HUD issue a separate NOFA for Outreach and Training Grants. The Department is publishing one NOFA for both categories of Preservation Support Grants because it is more cost-effective and efficient.

One commenter contended that more money should be made available for Preservation Support Grants because a great majority of at-risk projects in the commenter's State are not organized. Some residents are even unaware that they live in HUD-assisted buildings; few have heard of LIHPRHA or ELIPHA and even fewer are aware of HUD's Technical Assistance Grants.

The statute provides that of any amount made available for these purposes in any appropriations act, 90 percent shall be set aside for use in accordance with Direct Assistance Grants and 10 percent shall be set aside for use in accordance with Preservation Support Grants. However, the Department will give preference to a Preservation Activity Grant applicant that shows it will take specific steps to inform and organize potential eligible low-income tenants who are unlikely to be unaware of the Preservation program (see Section IV.C(2) of this NOFA).

One commenter objected to large national contracts for Outreach and Training grants. The commenter suggested that $5 million currently set aside for additional national training should be put into Outreach and Training grants and administered in a separate NOFA, stating that a previous contract of $1.5 million to provide training around the country was ineffective and that small, local contracts are much better than a large national contract. The commenter further contended that most resident learning is hands-on, not in hotel workshops. The Department will administer the Preservation Support Grant program and will award Outreach and Training grants only to local resident-controlled or community-based nonprofit organizations that demonstrate their experience and ability to organize and educate the residents, or to city, county, or multi-county providers. Where no local resident-controlled or community-based nonprofit organizations exists, or where one exists, but does not apply or has applied, but its application was disapproved, HUD will accept applications to conduct outreach and training from community action, legal service, and fair housing counseling agencies; State and local government agencies; nonprofit intermediaries; or other groups that can demonstrate that they have three or more years of experience dealing with tenant issues and a capacity to undertake organizing unorganized tenants.

II. Purpose and Substantive Description

A. Authority and Background

The funding made available under this NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 HCDA), in order to provide outreach and training to eligible resident groups and to assist the Department in carrying out its responsibilities under the Emergency Low-Income Housing Preservation Act of 1987 (Pub. L. 100–242, section 201 of the Housing and Community Development Act of 1987, approved Feb. 5, 1988) (ELIHPA), or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA). This NOFA combines funding authorized for FY 1993 and FY 1994 in section 312 of the 1992 HCDA. Funds announced by this NOFA will include amounts authorized in 1992 that remain unobligated from the Preservation Technical Assistance Grant Program, resulting in up to a total of $6 million available under this NOFA.

The origins of LIHPRHA are in ELIHPA. The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. The Department's regulations implementing these statutory provisions were published as an interim rule at 57 FR 11992 (April 8, 1992), and were revised in interim rules at 57 FR 57312 (December 3, 1992), 58 FR 4870 (January 15, 1993), and 58 FR 3384 (July 13, 1993, including requirements in this NOFA that were imposed by Title III of the 1992 HCDA). All references in this NOFA to sections 248.1 through 248.183 are to those sections as set out in these interim rules.

B. Allocation Amounts

The purpose of this NOFA is to make $6 million in grant funds available to eligible applicants to perform resident outreach and training, organizational development, education activities, and preservation assistance activities. These funds will be allocated equally between Outreach and Training Grants and Preservation Activity Grants. One million dollars ($1 million) of these grant funds are from unobligated funds from fiscal year 1992 Preservation Technical Assistance Grant funds. Both grant categories are described below.

C. Grant Categories

There are two types of Preservation Support Grants: (1) Outreach and Training Grants; and (2) Preservation Activity Grants.

Outreach and Training Grants are available for established community, city-wide, county-wide, or multi-county coalitions of resident-controlled groups or community-based nonprofit organizations with experience in resident education and organizing, to identify and organize residents of eligible low-income housing.

Preservation Activity Grants are available to community action, legal service, and fair housing counseling agencies; State and local government agencies; and State, regional, or national nonprofit intermediaries, for the purpose of conducting outreach and training and organizational development for unorganized tenants or carrying out other proposed activities, described in Section III.F of this NOFA.

that further the preservation program in their jurisdictions.

D. Grant Amounts

(1) *Outreach and Training Grants.* HUD will accept Outreach and Training applications that propose a term of from one to three years. The Department will limit the grant amount to $450,000 for successful applications that propose three-year activities. The maximum annual distribution for such grants will be $150,000, which must be obligated or expended by the grantee prior to the distribution of additional funds. Day-to-day draw-down limits and procedures will be described in the application package.

Outreach and Training grants will be awarded in amounts reflective of the overall program design, capacity, and need, as measured by the criteria in Section IV.C of this NOFA.

(2) *Preservation Activity Grants.* At the regional, State, and local levels, the Department will make a one-time award, not to exceed $250,000, for proposals designed to address outreach and training and organizational development for tenants or other types of Preservation activities. Applicants applying for Preservation Activity grants that propose outreach and training and organizational development for tenants, or other eligible preservation activities that are national in scope and require a high level of funding to be effective, may receive a one-time award in an amount not to exceed $500,000. However, the Department will give preference to eligible regional, State, and local intermediaries over national nonprofit organizations. A national nonprofit organization must document its ability to accomplish proposed tasks on a national level and describe what resources it has to carry out the activity effectively and with success. Grantees in receipt of Section 254 funds may not use these funds to replace local or regional, public or private funding initiatives that are already in place.

The level of funding will be commensurate with the described level of complexity of activities, geographic scope, and number of potential participants. Activities must be completed in a timely manner and may not, in any case, exceed a three-year period.

The Department may terminate the grant if a grantee fails to complete the task within a reasonable time period. In determining the reasonableness of the time period, HUD will consider the complexity of the activity and the resources available to accomplish the task.

III. Eligibility Information

A. General

Preservation Support Grants are meant to fund activities that will further the Preservation process and are carried out by: local resident-controlled or community-based nonprofit organizations, in the case of Outreach and Training grants; and community action, legal service, and fair housing counseling agencies; State and local government agencies; and State, regional or national intermediaries, in the case of Preservation Activity grants. Resident-controlled groups are comprised primarily of residents living in HUD-assisted projects.

Outreach and Training grant applications will be reviewed separately from Preservation Activity grant applications. However, if all funds are not awarded to eligible applicants in one grant category, the Department will have the option to utilize unused funds from that grant category to fund acceptable applications for the other. The Department will give priority to resident-controlled and community-based organizations that apply for Outreach and Training Grants. In competitive situations where resident outreach and training activities are proposed under both categories of the Preservation Support Grant (e.g., a local government or non-community-based nonprofit organization proposing a resident outreach and training program within the same jurisdiction as the resident-controlled group), applications from a Preservation Activity Grant applicant will only be considered in the balance of a jurisdiction not served by an Outreach and Training Grant recipient.

Grantees will be selected based on eligibility thresholds; applicant type, capacity, and experience; and jurisdictional needs, as described below in this NOFA.

B. Eligible Recipients

Eligible recipients of Outreach and Training and Preservation Activity grants will be tenants living in eligible Title II or Title VI projects. In addition, funds provided in this NOFA may be available to provide assistance to tenants living in property disposition projects that are subject to section 203(c)(2)(D) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11), as amended by section 101(b) of the Multifamily Housing Property Disposition Reform Act of 1994 (108 Stat. 342; Pub. L. 103–233, approved April 11, 1994).

C. Eligible Applicants—Outreach and Training Grants

An organization applying to do resident outreach and training must demonstrate that it is a nonprofit organization, has at least two years of experience in resident organizing and education, and is either resident-controlled with a majority of the board consisting of residents of HUD-assisted housing or is a community-based organization (CBO) that meets the definition of a CBO in 24 CFR 248.101, with a majority of its activities taking place at the community level. Applications from newly formed resident-controlled groups and CBOs that have applied for tax-exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered as long as the organization is approved before the effective date of the grant agreement. Also, newly formed and otherwise eligible organizations may submit joint applications with eligible organizations that are tax-exempt.

Priority will be given to local resident-controlled groups. Next in order of preference will be established community-based organizations and, thirdly, city-wide, county-wide, or multi-county coalitions of resident groups with a majority (51 percent or more) of Board participation by HUD tenants and that can provide documentation that they have experience working with ELIPHA and/or LIHPRHA programs. Where there is no application from such groups, community action, legal service, and fair housing counseling agencies; State and local government agencies; and intermediaries may apply for Preservation Activity grants to initiate outreach and training and the organizational development of tenants.

D. Eligible Activities—Outreach and Training Grants

Outreach and Training Grants are available for the following activities:

- Identifying residents and resident groups living in eligible preservation projects. Eligible projects include any property that is or could become available for sale and meeting the definition of "eligible low-income housing" at 24 CFR 248.101 or 248.201, regardless of whether an owner has filed a Notice of Intent.
- Providing outreach and training to tenants identified by local Field Offices where HUD staff may not be available to perform such tasks due to budgetary constraints. These activities could include attending Preservation Capital Needs Assessment (PCNA) exit

conferences, obtaining translation of the owner's Notice of Intent, providing other service where needed for PCNA exit conferences, or attending other resident meetings.

- Organizing residents of eligible low-income housing to participate effectively in the preservation process.
- Performing outreach, training, and counseling, which may include sound housing management, maintenance, and financial management, to residents and resident groups living in eligible preservation projects.
- Delivering project-based, community-, city-, or county-wide training programs on ELIHPA, LIHPRHA, resident participation, and forms of resident homeownership options.

E. Eligible Applicants—Preservation Activity Grants

(1) *Description of applicants.* HUD will accept applications from community action, legal service, and fair housing counseling agencies; regional, State, and local government agencies; nonprofit intermediaries; or other groups that can demonstrate that they have both three or more years of experience dealing with tenant issues and a capacity to undertake organizing unorganized tenants. A national nonprofit organization must have at least five years of similar experience. Eligible applicants fall into one of the following categories:

(1) *State and local housing agencies.* This category includes public housing agencies, community redevelopment agencies, other agencies that administer a community's Comprehensive Housing Affordability Strategy (CHAS), and State housing finance authorities.

(2) *Regional, State, and local nonprofit organizations* that must have been in existence for at least three years prior to the date of application and either are classified as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986 or are otherwise a tax-exempt entity.

(3) *National nonprofit intermediaries* that have been in existence for at least five years prior to the date of application and are classified as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986. An intermediary applying for Preservation Activity Grant funds must:

- Have as a central purpose of its organization the preservation of low-income housing and the prevention of displacement of low- and moderate-income residents;
- Not receive direct Federal appropriations for operating support;
- Meet the standards of fiscal responsibility established in OMB Circulars A–110 and A–122 or, if a State or local agency, 24 CFR part 85 and OMB Circular 87; and
- Have a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities.

(2) *Limitations on Intermediaries.* Intermediaries that are eligible to apply to administer Technical Assistance Grants may be eligible to apply for a Preservation Activity Grant pursuant to the following prohibition. Intermediaries selected to administer Technical Assistance Grants, pursuant to Section 255(a) of the 1992 HCDA, "may not provide other services to grant recipients that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved." Therefore, administering intermediaries may not also apply to perform outreach and organizational development for tenants, or other types of Preservation support activities for resident groups that receive technical assistance funds through the Resident Capacity or Predevelopment Grants that the intermediary is administering.

Also, unlike intermediaries that are eligible to administer Direct Assistance grants, those intermediaries applying for Preservation Activity Grants may not serve as pass-through intermediaries. That is, they are limited to using grant funds to carry out eligible grant activities and may not administer the allocation of HUD grant or loan funds.

F. Eligible Activities—Preservation Activity Grants

Preservation Activity grants will be available to:

- Provide outreach and training and organizational development for "unorganized" tenants, as provided by resident-controlled groups and CBOs under the Outreach and Training category in Section III.C of this NOFA, if no experienced local resident-controlled group or community-based nonprofit organization exists or one exists, but does not apply or has applied, but HUD disapproved its application;
- Provide outreach and training to tenants identified by local Field Offices where HUD staff may not be available to perform such tasks due to budgetary constraints. These activities could include attending Preservation Capital Needs Assessment (PCNA) exit conferences, obtaining translation of the owner's Notice of Intent, providing other service where needed for PCNA exit conferences, or attending other resident meetings.
- Undertake pilot programs that assist HUD field staff to expedite the preservation process or otherwise conserve staff resources;
- Streamline the preservation process via the activities described in this Section;
- Educate parties outside the Department (including, but not limited to appraisers, financial institution officials, State and local government officials, community groups, and owner entities) about the preservation process;
- Establish preservation clearinghouses as a resource to resident organizations, community groups, and potential purchasers;
- Create informational materials about the preservation process for nationwide distribution;
- Perform legal and financial research studies on eligible properties; and
- Provide support activities that would otherwise further the Preservation program established under ELIHPA and LIHPRHA.

G. Ineligible Activities—Both Categories

Activities ineligible for funding under either category (Outreach and Training or Preservation Activity) of Preservation Support grants include:

- Purchase of land or buildings or any improvements to land or buildings;
- Entertainment, including associated costs such as food and beverages, but not including refreshments and supplies for organizational meetings;
- Payments of fees for lobbying services;
- Activities funded from other sources;
- Activities already being performed outside the scope of this NOFA; and
- Activities completed prior to the date funding is approved under this NOFA.

IV. Selection Process

A. Screening

The Multifamily Preservation Division staff in Headquarters will screen each application to determine whether it meets the technical requirements for application submission contained in this NOFA and the application package. If the application meets the technical requirements, it will be reviewed and ranked according to the selection criteria in Section IV.C of the NOFA. After screening the application, the Preservation Division will fax information about the applicant and application, such as name, project number, and experience the applicant identifies it has with HUD and the

Preservation Program, to the Chief, Loan Management Division, in the HUD Field Office with jurisdiction over the applicant's geographical area. The Loan Management staff will review the information and provide comments about the information and the extent of its experience, if any, with the organization. Within sixty days from the application deadline, the Preservation Division will notify an applicant of its selection or rejection. Grantees will be required to sign a grant agreement.

B. Threshold Review—Correction of Deficient Applications

(1) *Threshold Review.* The Department will perform a threshold review of the applications to ensure completeness and will request applicants to correct any nonsubstantive deficiencies. Nonsubstantive deficiencies are those that are not integral to the application's review, such as a certification.

(2) *Revisions.* If an application is found to be deficient in a nonsubstantive manner, the Department will inform the applicant of such deficiency within 15 days after the application deadline and the applicant will have seven days to submit revisions. If an application is substantively deficient at the time of application deadline, the application will be rejected.

C. Selection Criteria

HUD will review each Preservation Support Grant application and assign up to 100 points in each category (Outreach and Training Grants and Preservation Activity Grants), in accordance with the criteria described in this Section.

In competitive situations where resident outreach and training activities are proposed under both categories of Preservation Support Grants (e.g., a local government or non-community-based nonprofit organization proposing a resident outreach and training program within the same jurisdiction as the resident-controlled group), applications from a Preservation Activity Grant applicant will only be considered in any part of a jurisdiction not served by an Outreach and Training Grant recipient.

After rating, the Department will rank the applications according to score and will fund them in rank order, reserving the option, if needed, to establish a minimum score of 60 points for funding. Grants will be awarded based upon the highest scores, which represent the best overall assessment of the potential of the proposed work activities for achieving the principal objective of this competition: to promote the ability of residents to participate meaningfully in the preservation process and to enable State or local housing agencies or intermediaries to conduct outreach and training and organizational development for unorganized tenants and undertake other activities that further preservation programs.

Applications that pass the technical threshold review will be rated as follows:

(1) *Outreach and Training Grants.* Under this category, the Department will require successful applicants to restrict provision of outreach and training to resident groups and community-based nonprofit purchasers. In addition, local resident-controlled groups will receive priority rating over community-based organizations and city-wide, county-wide, or multi-county coalitions of resident groups.

(a) *Capacity* is reflected in the qualifications or capabilities of the applicant (maximum points: 50). The capability of the applicant to conduct community-, city-, or county-wide outreach and training programs to identify and organize residents of eligible low-income housing within a reasonable time period, within budget, and in an effective manner, as demonstrated through past performance. In assigning points for this criterion, HUD will consider:

- *Direct Experience.* An applicant under this category must provide documentation that they have experience working with ELIPHA and/or LIHPRHA programs. The applicant or key staff must show that it has at least two years of experience in this area of work to receive points under this criterion. An applicant also may demonstrate this experience by the participation of or affiliation with board members or consultants. The Department will rate the application according to the degree to which the applicant describes its ability to organize residents and conduct educational workshops or describe how it will obtain such experience. This criterion will be measured by previous experience and success in outreach, recruitment, counseling, organizational development, and training (* * * up to 20 points).
- *Preservation Experience.* The degree of knowledge, experience, and expertise the applicant can show that it has, or will obtain, with ELIHPA and/or LIHPRHA programs, to ensure compliance with relevant program requirements and to enable newly organized tenant groups to participate in these Preservation programs. This criterion will be measured by previous experience (* * * up to 20 points).
- *Management Capacity.* The extent to which the applicant can ensure through its organization and management plans that the activity for which it applied will be well-managed; carried out in a timely manner; and protected from waste, fraud, or other abuse of funds, based on past performance with similar programs (* * * up to 5 points).
- *Fiscal Responsibility.* The ability of the applicant or key staff to handle, manage, and account adequately for financial resources and to use acceptable financial control procedures, demonstrated through past performance of the applicant entity or key staff with Federal, State, or local funds, or an explanation of how such capability will be obtained (* * * up to 5 points).

(b) *Level of Resident Participation in the Organization.* Priority will be given to established resident-controlled groups and nonprofit community-based organizations that have a majority (51 percent or more) of Board participation by tenants in HUD-assisted project(s) (maximum points: 20). HUD will rate the applications on a scale that gives the highest number of points to organizations with the highest number of HUD-assisted tenants on the Board.

(c) *Need.* The degree of need for the proposed outreach and training programs to identify and organize tenants of eligible low-income housing, demonstrated by the number of eligible projects in the community (maximum points: 15). In measuring this criterion, HUD will consider the number of eligible projects in the area and the number of tenants that the applicant identifies that would benefit from the activity.

(d) *Program Quality and Feasibility.* The comprehensiveness of the proposed plan and the potential of the applicant for developing a successful and effective program (maximum points: 15). HUD will consider the extent to which the proposed program represents a sound, comprehensive, and responsive plan for developing outreach and training efforts, organizing tenants, and providing housing counseling. Program quality will be evaluated in terms of whether the proposed program activities meet the Outreach and Training program objective.

(2) *Preservation Activity Grants.* Under this category, the Department will give preference to eligible regional, State, and local intermediaries over national nonprofit organizations. Also, the Department will give priority to any applicant that shows its intention to initiate outreach and training and the organizational development of low-income tenants where no resident-

controlled or community-based organization exists. Organizations such as community action, legal service, and fair housing counseling agencies must demonstrate that they have three or more years experience dealing with tenants and the capacity to undertake tenant organization. Regional, State, and local government agencies will be required to document their ability to implement the proposed activity on a regional level, and intermediaries that propose to undertake outreach and training and organizational development for tenants or carry out other proposed support activities on a national level must demonstrate their ability to accomplish such tasks.

(a) *Capacity* is the qualification or capabilities of the applicant to develop and implement: Successful and effective outreach and training and organizational development for tenants; and other Preservation support activities, as described in Section III of this NOFA (maximum points: 50).

- *Preservation Experience.* The degree of knowledge, experience, and expertise the applicant can show that it has, or will obtain, with ELIHPA and/or LIHPRHA programs, to ensure compliance with relevant program requirements and enable newly organized tenant groups to participate in these preservation programs. This criterion will be measured by previous experience (* * * up to 20 points).
- *Direct Experience.* The applicant or key staff must show that it has at least three years of experience in the area of work for which it is applying, or describe how it will obtain such experience. This criterion will be measured by previous experience and success in the applicable activity (* * * up to 20 points).
- *Management Capacity.* The extent to which the applicant can ensure through its organization and management plans that the activity for which it applied will be well-managed; carried out in a timely manner; and protected from waste, fraud, or other abuse of funds, based on past performance with similar programs (* * * up to 5 points).
- *Fiscal Responsibility.* The ability of the applicant or key staff to handle, manage, and account adequately for financial resources and to use acceptable financial control procedures, demonstrated through past performance of the applicant entity or key staff with Federal, State, or local funds, or an explanation of how such capability will be obtained (*. * * up to 5 points).

(b) *Jurisdictional Needs.* This criteria will be based on the Department's determination of how well the applicant addresses specific unmet needs in the jurisdiction. This assessment will be based on the number of current preservation cases in the Multifamily Preservation Processing System (MPPS). The Department will also take into consideration the number of applications received from that jurisdiction. This assessment may include availability of Department-sponsored or other training for residents and other groups (maximum points: 20 points).

(c) *Program Quality and Feasibility.* The comprehensiveness of the proposed plan and the potential of the applicant for developing a successful and effective program (maximum points: 30). HUD will evaluate the extent to which the proposed program: represents a sound, comprehensive, and responsive plan for developing any of the activities described in Section III.F of this NOFA and meets the Preservation Activity Grant Program objective.

- *Commitment.* The extent of the applicant commitment and responsiveness to the needs and problems of the tenants (* * * up to 10 points).
- *Outreach, Recruitment, and Selection Activities.* The level, nature, and comprehensiveness of proposed outreach, recruitment (including specific steps to be taken to attract potential eligible participants who are unlikely to be aware of the program), and selection strategies, as measured by: (i) the extent to which the applicant has developed special outreach efforts to recruit eligible low-income tenants; and (ii) the extent to which the proposed participant selection system supports these efforts (* * * 20 points).

V. Grant Application Process

A. Application Packages

Upon request, Preservation Support Grant application packages are available from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone number: 1–800–955–2232. Please refer to FR–3613 when requesting an application package.

For other questions about the Preservation program, please contact the Preservation Division, Room 6284, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–2300, or the contact numbers at the beginning of this NOFA.

B. Deadline for Submission

Applications for Preservation Support Grants must be physically received by the Multifamily Preservation Division no later than 4:30 p.m. (EST), on August 15, 1994. No facsimiles will be accepted. Any application received after that time will not be accepted for processing and will be returned to the applicant. Any revisions made in accordance with Section IV.B(2) of this NOFA may be transmitted by facsimile; however, the original revision must be subsequently submitted by mail or in person.

C. Submission Requirements

An applicant must provide a completed application, including the following, as applicable:

(1) OMB Standard Forms 424 and 424B;

(2) Summary of proposed activities and jurisdiction;

(3) Information about the applicant, including its history, its staff and qualifications, and its experience;

(4) Summary of plan to carry out proposed activities;

(5) Evidence of tax-exempt status, if applicable;

(6) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(7) Other disclosures, certifications, and assurances (including Drug-Free Workplace certification), as required under the law and this NOFA;

(8) Certification that the applicant and any of its affiliates do not have, and will not seek, an ownership interest in any developments that are to be assisted with these funds; and

(9) Other information and materials as may be described in the application kit.

VI. Other Matters

Public Reporting Burden

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
120		1		6		720

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this notice is not subject to review under the Executive Order 12612.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs related to family concerns.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the: Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients,

and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Dated: May 24, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–14344 Filed 6–13–94, 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday
June 14, 1994

Part IV

Environmental Protection Agency

40 CFR Part 710
Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPPTS–62140; FRL–4869–7]

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document announces the 1994 reporting period for the Inventory Update Rule, and amends the rule to update the reporting address.

DATES: This document is effective June 14, 1994. The 1994 reporting period is from August 25, 1994 to December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 12, 1986 (51 FR 21438), EPA promulgated a rule (40 CFR part 710, subpart B), referred to as the Inventory Update Rule (IUR), under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), requiring manufacturers and importers of certain chemical substances included on the TSCA Chemical Substance Inventory to report current data on the production volume, plant site, and site-limited status of the substances. After the initial reporting during 1986, recurring reporting is required every 4 years. A second reporting cycle took place in 1990. The third reporting period will be in 1994.

II. 1994 Reporting Period

The initial reporting period was August 25, 1986 to December 23, 1986. Reporting periods recur every 4 years from August 25 to December 23, so that the next reporting period is August 25, 1994 to December 23, 1994. Persons subject to the rule must submit the required information during this period.

III. Update of the Information

A. The TSCA Chemical Substance Inventory

As an aid to submitters reporting during 1986, EPA published a 1985 edition of the TSCA Chemical Substance Inventory. This publication, available from the Government Printing Office (GPO), superseded the 1979 edition and supplements prior to 1985. To aid reporters during 1990, EPA published a 1990 supplement to the 1985 edition. Copies of both the "TSCA Chemical Substance Inventory: 1985 Edition" and the "TSCA Chemical Substance Inventory: 1990 Supplement" may still be obtained by writing or calling: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238. The 1990 Supplement costs $15.00 in the U.S., $18.75 outside the U.S., and should be ordered by its Document Control Code, S/N 055–000–00361–1. The 1985 Edition costs $161.00 ($201.00 outside the U.S.), and its Document Control Code is S/N 055–000–00254–1.

In support of the 1994 reporting, EPA is publishing a revised TSCA Chemical Substances Inventory in a set of floppy diskettes for use in a personal computer instead of the hard copy form. These diskettes will contain information for all nonconfidential chemical substances added to the TSCA Inventory data base before May 1, 1994. The types of information contained in the diskettes will be similar to that found in the computer tape form of the TSCA Inventory that EPA has been disseminating to the public biannually through the National Technical Information Service (NTIS). Specifically, each of the chemical substances included in the diskettes is identified by a Chemical Abstracts (CA) Index or Preferred Name, the corresponding Chemical Abstracts Service (CAS) Registry Number, molecular formula, and if applicable, the chemical definition and appropriate EPA special flags as found in the printed Inventory. The substances are sequenced in ascending order of the corresponding CAS Registry Numbers. The diskettes will not include chemical synonyms that are copyrighted by the Chemical Abstracts Service. Furthermore, generic names or EPA Accession Numbers for substances with confidential chemical identities will not be included.

The diskette version includes over 62,000 records and requires 12 megabytes of disk space for installation. Installation software that will automatically uncompress the file is included with the diskettes. However, users will have to furnish their own data base management software to perform searches. Both tapes and diskettes will be available for sale from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650 or (800) 553–NTIS. The diskettes cost $195.00 in the U.S., Canada, and Mexico, and $390.00 for all other addresses. The NTIS Order Number for the diskettes is PB94–501731GEI. The tapes cost $360.00 in the U.S., Canada, and Mexico, and $720.00 for all other addresses. The NTIS Order Number for the tapes is PB94–501749GEI.

B. Reporting Address and Instructions

40 CFR 710.39 is being amended to reflect new addresses and telephone numbers, as follows:

Reporting Packages Address: TSCA Hotline (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, ATTN: Inventory Update Rule.

Mailing Address for Completed Forms: Document Control Officer (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule.

EPA will automatically mail out a reporting package to those facilities that reported in 1990. This package will include the manual entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base," a new Form U, and a copy of the **Federal Register** Notice. If you did not report in 1990, but need to report in 1994, the reporting package will be available from the TSCA Hotline at the address referenced above. Additional reporting forms will also be available from the TSCA Hotline.

IV. Reporting Form

Section 710.39 requires submitters to report using EPA's Form U. In 1990, EPA made changes in the form to assist submitters in completing it and facilitate processing of the form; none of the changes resulted in substantive revisions to the reporting requirements of the rule. New printed forms will be made available for reporting during 1994. Neither the 1986 nor the 1990 form is acceptable for 1994 reporting.

A. Reporting Errors

Several types of reporting errors occurred frequently enough in the past to merit discussion. One of the most frequent type of errors concerns the submitter reported Dun & Bradstreet number. Numerous submitters reported numbers with extra or missing digits, numbers which belonged to their parent companies (rather than the Dun & Bradstreet number assigned to the plant site for which the submitter was

reporting), or no number at all. This problem required EPA to send a large number of requests to the submitters for correction of submitter error. To avoid this error, all submitters should verify the accuracy of the Dun & Bradstreet number they are reporting. Those plant sites without Dun & Bradstreet numbers may obtain them, free of charge, by calling their local Dun & Bradstreet office.

Reporting of substances that are not required to be reported is another common error. Polymers, inorganics, microorganisms, and naturally occurring chemical substances are generally excluded from the reporting requirements. This exclusion does not however apply if the chemical substance is the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of TSCA or is the subject of an order issued under section 5(e) or 5(f) of TSCA or is the subject of relief that has been granted under a civil action under section 5 or 7 of TSCA. See § 710.26. Hydrates of chemicals which are on the TSCA Inventory in the anhydrous form are not reportable; however, the corresponding anhydrous form is subject to the reporting requirements. Furthermore, substances that have been delisted from the TSCA Inventory should not be reported.

Another significant source of errors is the manner in which chemical identifying numbers and names are entered in the reporting forms. Several types of identifying numbers (e.g., Chemical Abstracts Service Registry Numbers, Premanufacture Notification Numbers, and Accession Numbers) are allowed for reporting. Confusion on the appropriate way to identify a chemical substance and report an identifier has created many problems in the past. Note that the correct format for any CAS Registry Number being reported is six digits, hyphen, two digits, hyphen, one digit, e.g., XXXXXX–XX–X. Leading zeros on the left may be omitted. If the chemical identifier is a CAS Registry Number (ID Code = C), then this format must be used.

If the chemical substance name extends beyond the space provided on the report line, do not continue the name on the following report line. Instead, truncate the name at the end of the line with a series of three dots (ellipsis) or continue the name on a separate sheet of paper. This avoids the insertion of a new reporting line without a production volume.

When reporting the production volume, report the amount to the nearest whole number. Do not include decimal points. Scientific notation is also unacceptable.

A large number of errors are made in plant site and technical contact information. Please make sure that the correct information goes in the correct box. One common mistake is the lack of a signature in the signature box. The Form U will be returned if the signature is missing. In addition, the signature must match the name of the person in the Name/Title Field.

Lastly, persons who export chemicals found on the TSCA Chemical Substance Inventory are reminded that they may have reporting obligations under this rule. Section 12(a) of TSCA provides that chemicals manufactured for export are subject to the requirements of TSCA section 8. Persons who manufacture a chemical substance on the TSCA Inventory solely for export, are considered a manufacturer and are subject to all IUR requirements of the rule.

B. Confidentiality Claims

Since 1990, EPA has allowed submitters to report both confidential and nonconfidential substances on the same form, and to indicate which substances on a form have confidential identities. However, note that a submitter may only claim the identity of a chemical substance as confidential if that substance is already included on the TSCA Inventory with a confidential chemical identity. Furthermore, no confidentiality claim for chemical identity will be accepted unless accompanied by a separate written substantiation for the individual chemical substance claimed as confidential, with detailed answers to the 11 questions prescribed in § 710.38 of the Inventory Update Rule. As provided in § 710.38(d), failure to provide the necessary substantiation at the time of filing may result in the chemical identity reported being made available to the public without further notice to the submitter.

V. Electronic Reporting

Section 710.32(b) provides that magnetic media submitted in response to the IUR must meet the EPA specifications, as described in the "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base" available from the TSCA Hotline. In the 1986 rule, submitters were to report by paper or computer tape. Because of the ready availability of microcomputers, in 1990 EPA modified this section of the Instructions to allow reporting using floppy diskettes. The major change in 1994 is that magnetic tape submissions will not be accepted. For the 1994 reporting period, ASCII diskette submissions from IBM and compatible personal computers are permissible. EPA's specifications for the format and detailed instructions for electronic reporting can be found in "Instructions for Reporting for the 1994 Partial Updating of the TSCA Chemical Inventory Data Base." Because of TSCA security considerations, reporting via telecommunication lines is not accepted.

The 1986 rule required that chemical substances whose identities are confidential be reported by hard copy means only. This was amended in 1990 to allow reporting of such substances via magnetic media. In the 1994 reporting period, chemical substances whose identities are confidential may again be reported via magnetic media.

VI. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number OMB No. 2070–0070.

This collection of information has an estimated reporting/recordkeeping burden averaging 1.2 hours per chemical report per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to Chief, Information Policy Branch (Mail Code 2136); U.S. Environmental Protection Agency; 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 6, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 710 is amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 710.39 is revised to read as follows:

§ 710.39 Instructions for submitting information.

(a) All persons submitting written information in response to the requirements of this subpart must use original copies of Form U available from EPA at the address set forth in paragraph (b) of this section.

(b) Complete instructions for completing the reporting form and preparing a magnetic media report are given in the EPA publication entitled "Instructions for Reporting for 1994 Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained from the following address: TSCA Hotline (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule, (202) 554–1404.

(c) Completed reporting forms and magnetic media must be submitted to: Document Control Officer (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule.

[FR Doc. 94–14415 Filed 6–13–94; 8:45 am]

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federal register

Tuesday
June 14, 1994

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 810
Medical Device Recall Authority;
Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 810

[Docket No. 93N–0260]

Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing a proposed regulation to establish procedures to implement the new medical device recall authority provided in the Safe Medical Devices Act of 1990 (the SMDA). This new statutory authority protects the public health by permitting FDA to remove dangerous devices from the market promptly. This authority adds to other remedies already available to the agency, including notification, repair, replacement, and refund.

DATES: Written comments by September 12, 1994. FDA intends that any final rule that may issue based on this proposal become effective July 14, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Samalik, Center for Devices and Radiological Health (HFZ–321), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4595.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative History

On November 28, 1990, the SMDA, which amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), became law. The purpose of the new law was to improve the Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments), which had amended the act by establishing a comprehensive framework to regulate medical devices intended for human use in order to ensure their safety and effectiveness. The SMDA includes provisions designed to expand and strengthen FDA's authority to ensure that devices entering the market are safe and effective, to learn quickly about serious problems associated with medical devices, and to remove dangerous and defective devices from the market promptly.

The 1976 amendments provided FDA with various premarket controls over medical devices (e.g., classification, premarket notification, and premarket approval). The 1976 amendments also broadened the postmarket controls available to FDA with respect to medical devices, giving FDA the authority to require patient notification, repair, replacement or refund; medical device reporting and recordkeeping; compliance with current good manufacturing practices; and restrictions on the distribution of certain devices.

In 1990, Congress concluded, based on hearings and investigations, that the regulatory scheme established in the 1976 amendments was inadequate to protect the public health (H. Rept. 808, 101st Cong., 2d sess. 13–14 (1990)). The SMDA was enacted to enhance that regulatory scheme. Thus, the legislative intent of the SMDA in general was to streamline and strengthen the premarket and postmarket controls available to FDA with respect to medical devices.

In drafting the SMDA, both the House of Representatives and the Senate focused considerable attention on the implementation and enforcement of section 518 of the act (21 U.S.C. 360h) since its enactment in the 1976 amendments. This section, added by the 1976 amendments and amended by the Medical Device Amendments of 1992 (Pub. L. 102–300), authorizes FDA to require notification of a risk to health presented by a medical device, or to require repair, replacement, or refund of the purchase price of a device. The remedies provided in sections 518(a), (b), and (c) of the act are available where the agency has determined that the device presents an unreasonable risk of substantial harm to the public health.

The House Report accompanying H.R. 3095 states that:

> [E]ven when the FDA has discovered a serious health hazard associated with a medical device, the Agency faces a unique barrier to enforcing important administrative remedies. Unlike other health and safety agencies, FDA may not take administrative action to order a defective device recalled unless it can show that the device did not meet the state-of-the-art at the time it was designed and manufactured.

(H. Rept. 808, 101st Cong., 2d sess. 14 (1990).

Section 8 of the SMDA amended section 518 of the act by adding a new subsection (e) entitled "Recall Authority." The mandatory recall authority in section 518(e) of the act complements existing provisions in sections 518(a), (b), and (c) of the act. Section 518(e) provides that, if FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may order the appropriate person(s) to immediately cease distribution of the device, to immediately notify health professionals and device user facilities of the order, and to instruct such professionals and facilities to cease use of the device. Section 518(e) of the act also states that, after providing an opportunity for an informal hearing, FDA may amend the cease distribution and notification order to require a recall of the device. This new authority protects the public health by permitting FDA to ensure the prompt removal of dangerous and defective devices from the market.

Congress explained that "a 'reasonable probability' of an event is where it is more likely than not that the event will occur," and that FDA "will have considerable discretion in determining whether it is more likely than not that the continued distribution of a device would cause serious, adverse health consequences or death." (S. Rept. 513, 101st Cong., 2d sess. 19 (1990)).

The legislative history also makes clear that the term "serious, adverse health consequences" is intended to mean:

> Any significant adverse experience attributable to a device, including those which may be either life threatening, or involving permanent or long-term injuries, but excluding those non-life-threatening injuries which are temporary and reasonably reversible. In other words, injuries attributable to a device that are not significant in nature and are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition.

Section 518(e) of the act is self-executing and does not require rulemaking before the authority granted may be exercised. FDA is issuing this proposed rule, however, pursuant to its authority to promulgate regulations under section 701(a) of the act (21 U.S.C. 371(a)), to establish publicly the procedures that will be followed when FDA exercises its recall authority. FDA has already found the new authority in section 518(e) of the act useful in securing the prompt removal from the market of several devices that presented a risk to the public health under the statutory standard. The experience gained to date has been useful to the agency in developing the proposed rule.

II. Statutory Requirements

Section 518(e) of the act sets out a three-step procedure for the issuance of a mandatory medical device recall order. First, after finding that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease

distribution and notification order requiring the appropriate person to immediately: (1) Cease distribution of the device, (2) notify health professionals and device user facilities of the order, and (3) instruct these professionals and facilities to cease use of the device.

Second, FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device.

Third, after providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the agency determines that such an order is necessary.

As stated above, FDA will provide the person named in a cease distribution and notification order with an opportunity for an informal hearing. The hearing is to be held not later than 10 days after the date of issuance of the order. If a hearing is requested, the device still may not be distributed and health professionals and device user facilities must still be notified.

The language of the statute makes clear that there is to be only one opportunity for a hearing, and that the purposes of any hearing that is held are both to address the actions required by the cease distribution and notification order *and* to determine whether the order should be amended to require a recall. The legislative history of section 518(e) of the act, as reflected in the conference report, also clearly demonstrates congressional intent that there be one, and only one, opportunity for a hearing following the cease distribution order, and that it is at this hearing that the person named in the order may present data and information showing why the order should not be amended to require a recall:

> The conference agreement requires [FDA], after making an appropriate finding, to issue an initial order providing for the immediate cessation of distribution and use of the device, with an informal hearing to follow within 10 days to determine whether to vacate the order *or* whether to amend the order to require a recall. [Emphasis added.] (Conf. Rept. 959, 101st Cong., 2d sess. 25 (1990).

Congress intended that the informal hearing "would be analogous to the judicial hearing that is held prior to granting a temporary restraining order. Where circumstances require expedited action, a motion for a temporary restraining order can result in notice, a hearing and a judicial decision in a single day." (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).

III. Scope of the Proposed Regulation

The proposed regulation implementing section 518(e) of the act, if made final, would be set out in new 21 CFR Part 810—Medical Device Recall Authority. The regulation would establish the procedures that FDA would follow in conducting medical device recalls under section 518(e) of the act. FDA believes that the proposed regulation realizes congressional intent to allow for prompt action by the agency to protect the public health, while ensuring the rights of persons subject to a cease distribution and notification order or mandatory recall order. (S. Rept. 513, 101st Cong., 2d sess. 20 (1990)).

IV. Definition of Terms, Computing of Time, and Service of Orders

Proposed § 810.2 defines certain terms used in the proposed regulation. To ensure consistency in application, to the extent practicable, the proposed definitions of these terms are similar to definitions used in FDA's recall guidelines (part 7, subpart C (21 CFR part 7, subpart C)) or in proposed regulations to implement other provisions of the SMDA. Thus, the definitions of "cease distribution and notification strategy," "mandatory recall strategy," "consignee," and "correction," are based on definitions in § 7.3. The definition of "device user facility" is the same as that used in the medical device reporting tentative final rule (56 FR 60024, November 26, 1991).

The definitions of "reasonable probability" and "serious, adverse health consequences" are consistent with congressional use of these terms in the legislative history. (S. Rept. 513, 101st Cong., 2d sess. 19 (1990)).

Proposed § 810.3 provides that, in computing any period of time prescribed or allowed by the proposed regulation, the following rules would apply. First, the day of the act or event from which the designated period of time begins to run would not be included: "Day 1" would be the day *after* the act or event. Second, all calendar days would be included in the computation, including the last day of the period, unless the last day is a Saturday, Sunday, or Federal legal holiday, or, when the act to be done is the filing of a document with the agency, a day on which weather or other conditions have made the agency office to which such a filing is to be made inaccessible. In those cases, the period would run until the end of the next day which is not one of the days described above. For example, if a person named in a cease distribution and notification order receives the order on Friday, November 1, and a request for an informal hearing is required to be submitted to FDA within 3 days, the request would need to be submitted to FDA by the close of business on Monday, November 4. If the FDA office to which the request is to be submitted were closed on Monday, November 4, because of weather conditions, the request would be required to be submitted by close of business on Tuesday, November 5, or the next day on which the FDA office was open for business.

V. Procedures

Proposed § 810.10(d) describes certain information that FDA may require the person named in a cease distribution and notification order to submit to the agency. This information is similar to the information that firms which initiate voluntary recalls are now asked to submit to FDA under § 7.46. The reason for requiring submission of this information is to enable FDA to monitor compliance with the cease distribution and notification order and to determine whether additional action is necessary.

Under section 518(e)(1), FDA will provide the person named in a cease distribution and notification order with an opportunity for an informal hearing, to be held not later than 10 days after the date of issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall. The term "informal hearing" is defined in section 201(y) of the act (21 U.S.C. 321(y)). In the **Federal Register** of August 20, 1976 (41 FR 35282 at 35289), FDA interpreted the "informal hearing" provisions of section 201(y) of the act as the "functional equivalent of FDA's regulatory hearing" described in 21 CFR part 16.

Proposed § 810.11(a)(1) provides that the person named in a cease distribution and notification order may, within the timeframe specified in the order, submit a written request to FDA for a regulatory hearing. The request must be addressed to the agency employee identified in the order. Ordinarily, FDA will require that the person named in the cease distribution and notification order submit the hearing request within 3 days of receipt of the order. Where warranted, however, FDA may require that the hearing request be submitted in less than 3 days, possibly even on the same day on which the person receives the order. These procedures reflect congressional intent that the hearing be analogous to a hearing on a temporary restraining order, where notice, a hearing, and a judicial decision may all

occur in a single day. (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).

Under 21 CFR 16.26(b), after the hearing commences, the presiding officer may issue a summary decision on any issue in the hearing if he or she determines that there is no genuine and substantial issue of fact respecting that issue.

Although not required by section 518(e) of the act, FDA is proposing an alternative review process for persons who do not want to make an appearance before the agency, but who do wish to challenge a cease distribution and notification order. Accordingly, under proposed § 810.12(a), the person named in a cease distribution and notification order may, in lieu of requesting a regulatory hearing under proposed § 810.11, submit a written request to FDA asking that the order be modified or vacated. The written request must be addressed to the agency employee identified in the order and must be submitted within the timeframe specified in the order.

FDA recognizes that, in the time immediately following the issuance of a cease distribution and notification order, sufficient information may not be available to the agency to enable it to determine whether the actions being taken by the person named in the order are adequate to protect the public health. For example, where the person named in the order elects to recall the device voluntarily, it is possible that FDA may determine later that the voluntary recall is inadequate to protect individuals from the risks associated with use of the device. Thus, FDA may find it necessary to amend the cease distribution and notification order to include a mandatory recall even where, at an earlier time, voluntary efforts appeared to be adequate.

If FDA initially determines that a cease distribution and notification order need not be amended to require a mandatory recall, but subsequently finds that the person named in the order has failed to comply with the requirements of the order, FDA may amend the order by issuing a mandatory recall order under proposed § 810.13.

VI. Enforcement Provisions

The failure to comply with a cease distribution and notification order issued under proposed § 810.10 or a mandatory recall order issued under proposed § 810.13 renders a device misbranded under section 502(t)(1) of the act (21 U.S.C. 352(t)(1)). A misbranded device is subject to seizure under section 304 of the act (21 U.S.C. 334) and its introduction into interstate commerce is a prohibited act under sections 301(a), (b), (c), (g), and (k) of the act (21 U.S.C. 331(a), (b), (c), (g), (k)). Any person who fails or refuses to comply with any requirement of a cease distribution and notification order or a mandatory recall order has committed a prohibited act under section 301(q) of the act.

A firm in violation of section 301 of the act may be enjoined under section 302 of the act (21 U.S.C. 332) and any person responsible for the violation is subject to criminal penalties under section 303(a) of the act (21 U.S.C. 333(a)). In addition, any person who violates a requirement of the act with respect to a device is also subject to civil penalties under section 303(f) of the act.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency believes that only a small number of firms will be affected by this proposal. The recall authority would be invoked by the Center for Devices and Radiological Health (CDRH) in those instances that match very closely the definition of a class I recall; where there is a strong likelihood that the use of or exposure to a device would cause serious adverse health consequences or death. Thus, the agency believes that this new authority will not be used frequently. While both the number of class I recalls per year, and the costs associated with those recalls vary quite widely, the greatest number of such recalls in 1 year to date has been 36, and the average over the last 5 fiscal years has been 19 per year. Thus, the agency expects that no more than one or two recalls per year would be ordered that would not have occurred without this regulation. Although the agency does not have a cost figure for a recall, it is likely that the cost would be under $2 million. Because of these reasons, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

IX. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: "Recall Authority" is intended to protect the public health by permitting FDA to ensure the prompt removal of dangerous and defective devices from the market under Pub. L. 101–629.

Description: FDA is publishing a proposed regulation to establish procedures to implement the new medical device recall authority provided in the SMDA of 1990. In accordance with that authority, FDA may issue an order requiring appropriate persons to cease distribution of a medical device and to notify health professionals and device user facilities of the order and instruct them to cease use of the device, if the agency finds that there is a reasonable probability that the device would cause serious adverse health consequences or death. After providing the person subject to the order with an opportunity for an informal hearing, FDA may amend the order to require a mandatory

recall of the device. This authority is in addition to other remedies already available to the agency, including notification, repair, replacement, refund, and reimbursement.

ESTIMATED ANNUAL REPORTING BURDEN

Section	Annual Number of Responses	Average Burden Per Response (hours)	Total Annual Burden (hours)
§810.13(b)(3)	2	480	960

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals wishing to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct comments to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, D.C. 20503, Attn: Desk Officer for FDA.

X. Request for Comments

Interested persons may, on or before September 12, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 810

Administrative practice and procedure, Cease distribution and notification orders, Mandatory recall orders, Medical devices, Recordkeeping and reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that new part 810 be added to read as follows:

PART 810—MEDICAL DEVICE RECALL AUTHORITY

Subpart A—General Provisions

Sec.

Subpart B—Mandatory Medical Device Recall Procedures

Authority: Secs. 201, 301, 302, 303, 304, 501, 502, 518, 701, 705 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 332, 333, 334, 351, 352, 360h, 371, 375).

Subpart A—General Provisions

§ 810.1 Scope.

Part 810 describes the procedures that the Food and Drug Administration will follow in exercising its medical device recall authority under section 518(e) of the Federal Food, Drug, and Cosmetic Act.

§ 810.2 Definitions.

As used in this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency* or *FDA* means the Food and Drug Administration.

(c) *Cease distribution and notification strategy* or *mandatory recall strategy* means a planned, specific course of action to be taken by the person named in a cease distribution and notification order or in a mandatory recall order, which addresses the extent of the notification or recall, the need for public warnings, and the extent of effectiveness checks to be conducted.

(d) *Consignee* means any person or firm that has received, purchased, or used a device that is subject to a cease distribution and notification order or a mandatory recall order.

(e) *Correction* means repair, modification, adjustment, relabeling, or inspection (including patient monitoring) of a device, without its physical removal from its point of use to some other location.

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, or outpatient treatment or diagnostic facility that is not a physician's office.

(g) *Health professionals* means practitioners, including physicians, nurses, pharmacists, dentists, respiratory therapists, physical therapists, technologists, or any other practitioners or allied health professionals that have a role in using a device for human use.

(h) *Reasonable probability* means that it is more likely than not that an event will occur.

(i) *Serious, adverse health consequence* means any significant adverse experience, including those which may be either life threatening or involve permanent or long-range injuries, but excluding non-life-threatening injuries that are temporary and reasonably reversible. Injuries attributable to a device that are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition.

(j) *Recall* means the correction or removal of a device for human use where FDA finds that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(k) *Removal* means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

§ 810.3 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or Federal legal holiday, or, when the act to be done is the filing of a document with the agency, a day on which weather or other conditions have made the agency office to which such a filing is to be made inaccessible, in which event the period

runs until the end of the next day which is not one of the aforementioned days.

§ 810.4 Service of orders.

Orders issued under this part will be served in person by a designated employee of FDA, or by registered mail, to the named person or designated agent at the named person's or designated agent's last known address in FDA's records.

Subpart B—Mandatory Medical Device Recall Procedures

§ 810.10 Cease distribution and notification order.

(a) If FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the agency may issue a cease distribution and notification order requiring the person named in the order to immediately:

(1) Cease distribution of the device;

(2) Notify health professionals and device user facilities of the order; and

(3) Instruct these professionals and facilities to cease use of the device.

(b) FDA will include the following information in the order:

(1) The requirements of the order relating to cessation of distribution and notification of health professionals and device user facilities.

(2) Pertinent descriptive information to enable accurate and immediate identification of the device subject to the order, including, where known:

(i) The brand name of the device;

(ii) The common name, classification name, or usual name of the device;

(iii) The model, catalog, or product code numbers of the device; and (iv) The manufacturing lot numbers or serial numbers of the device or other identification numbers.

(3) A statement of the grounds for FDA's finding that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(c) FDA may also include in the order a model letter for notifying health professionals and device user facilities of the order and a requirement that notification of health professionals and device user facilities begin and be completed within a specified timeframe.

(d) FDA may also require that the person named in the cease distribution and notification order submit any or all of the following information to the agency by a time specified in the order:

(1) The total number of units of the device produced and distributed and the timespan of the production and distribution.

(2) The total number of units of the device estimated to be in distribution channels.

(3) The total number of units of the device distributed to health professionals and user facilities.

(4) The total number of units of the device in the hands of home users.

(5) Distribution information, including the names and addresses of all direct consignees.

(6) A copy of any written communication used by the person named in the order to notify health professionals and user facilities.

(7) The proposed strategy for complying with the cease distribution and notification order.

(8) Progress reports to be made at specified intervals, showing the names and addresses of health professionals and user facilities that have been notified, names of specific individuals contacted within user facilities, and the dates and times of such contacts.

(9) The name and address of any health professional or user facility that refuses to comply with the notification instructions.

(10) The name, address, and telephone number of the person who should be contacted concerning implementation of the order.

(e) FDA will provide the person named in a cease distribution and notification order with an opportunity for a regulatory hearing on the actions required by the cease distribution and notification order and on whether the order should be modified, vacated, or amended to require a mandatory recall of the device.

(f) FDA will also provide the person named in the cease distribution and notification order with an opportunity, in lieu of a regulatory hearing, to submit a written request to FDA asking that the order be modified or vacated.

(g) FDA will include in the cease distribution and notification order the name, address, and telephone number of an agency employee to whom any request for a regulatory hearing or agency review is to be addressed.

§ 810.11 Regulatory hearing.

(a) Any request for a regulatory hearing shall be submitted in writing to the agency employee identified in the order within the timeframe specified by FDA.

(b) The regulatory hearing shall be limited to:

(1) Reviewing the actions required by the cease distribution and notification order and determining whether FDA should affirm, modify, or vacate the order; and

(2) Determining whether FDA should amend the cease distribution and notification order to require a recall of the device that was the subject of the order.

(c) Any hearing requested by the person named in a cease distribution and notification order will be conducted in accordance with the procedures set out in section 201(y) of the act (21 U.S.C. 321(y)) and part 16 of this chapter, except that the order issued under § 810.10, rather than a notice under§ 16.22(a) of this chapter, provides the notice of opportunity for a hearing and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter. As provided in § 16.60(h) of this chapter, if FDA believes that immediate action is necessary to protect the public health, the agency may waive, suspend, or modify any procedure in part 16 pursuant to § 10.19 of this chapter.

(d) If the person named in the cease distribution and notification order does not request a regulatory hearing within the timeframe specified by FDA in the cease distribution and notification order, that person will be deemed to have waived his or her right to a hearing.

(e) The presiding officer will hold any regulatory hearing requested under paragraph (a) of this section not later than 10 days after the date of issuance of the cease distribution and notification order, unless FDA and the person named in the order agree to a later date.

§ 810.12 Written request for review of cease distribution and notification order.

(a) In lieu of requesting a regulatory hearing under§ 810.11, the person named in a cease distribution and notification order may submit a written request to FDA asking that the order be modified or vacated. Such person shall address the written request to the agency employee identified in the order and shall submit the request within the timeframe specified in the order.

(b) A written request for review of a cease distribution and notification order shall identify each ground upon which the requestor relies in asking that the order be modified or vacated.

(c) The agency official who issued the cease distribution and notification order shall provide the requesior written notification of his or her decision to affirm, modify, or vacate the order within a reasonable time after completing the review of the request. The agency official will include in this written notification:

(1) A statement of the grounds for the decision to affirm, modify, or vacate the order; and

(2) The requirements of any modified order.

§ 810.13 Mandatory recall order.

(a) If the person named in a cease distribution and notification order does not request a regulatory hearing or submit a request for agency review of the order, or, if after conducting a regulatory hearing or completing agency review of a cease distribution and notification order pursuant to § 810.11 or § 810.12, FDA determines that the order should be amended to require a recall of the device with respect to which the order was issued, FDA shall amend the order to require such a recall.

(b) In a mandatory recall order, FDA may:

(1) Specify that the recall is to extend to the wholesale, retail, or user level.

(2) Specify a timetable in accordance with which the recall is to occur and be completed.

(3) Require the person named in the order to submit to the agency a proposed recall strategy, as described in § 810.14, and periodic reports describing the progress of the mandatory recall, as described in § 810.16.

(4) Provide the person named in the order with a model recall notification letter.

(c) FDA will not include in a mandatory recall order a requirement for:

(1) Recall of a device from individuals; or

(2) Recall of a device from device user facilities, if FDA determines that the risk of recalling the device from the facilities presents a greater health risk than the health risk of not recalling the device from use, unless the device can be replaced immediately by the recalling firm with an equivalent device (which may be a competitor's product).

(d) FDA will include in a mandatory recall order provisions for notice to individuals subject to the risks associated with use of the device. If a significant number of such individuals cannot be identified, FDA may notify such individuals pursuant to section 705(b) of the act.

(e) If FDA initially determines that a cease distribution and notification order need not be amended to require a mandatory recall, but subsequently finds that the person named in the order has failed to comply with the requirements of the order, or that the actions taken are not adequate to protect individuals from the risks associated with use of the device, FDA may amend the order to require a recall of the device.

§ 810.14 Cease distribution and notification or mandatory recall strategy.

(a) *General.* The person named in a cease distribution and notification order issued under § 810.10, or a mandatory recall order issued under § 810.13, shall develop a strategy for complying with the order that is appropriate for the individual circumstances and that takes into account the following factors:

(1) The nature of the serious, adverse health consequences related to the device;

(2) The ease of identifying the device;

(3) The extent to which the risk presented by the device is obvious to a health professional or user facility;

(4) The extent to which the device is used by health professionals and user facilities; and

(5) The extent to which efforts to notify health professionals and user facilities and to instruct such professionals and facilities to cease use of the device have been successful.

(6) The person named in the order shall submit a copy of the proposed strategy to the agency within the timeframe specified in the order.

(7) The agency will review the proposed strategy and make any changes to the strategy it deems necessary. The person named in the order shall act in accordance with a strategy determined by FDA to be appropriate, but shall initiate the strategy as soon as submitted to the agency unless notified not to do so.

(b) *Elements of the strategy.* A proposed strategy shall meet all of the following requirements:

(1)(i) The person named in the order shall specify the level in the chain of distribution to which the cease distribution and notification order or mandatory recall order is to extend as follows:

(A) Consumer or user level, e.g., health professional, consignee, or user facility level, including any intermediate wholesale or retail level; or

(B) Retail level, to the level immediately preceding the consumer or user level, and including any intermediate level; or

(C) Wholesale level.

(ii) The person named in the order shall not recall a device from individuals; and

(iii) The person named in the order shall not recall a device from user facilities if FDA notifies the person not to do so because of a risk determination under § 810.13(c)(2).

(2) The person named in a recall order shall ensure that the strategy provides for notice to individuals subject to the risks associated with use of the recalled device. The notice may be provided through the individual's health professional if FDA determines that such consultation is appropriate and would be the most effective method of notifying patients.

(3) Effectiveness checks by the firm are required to verify that all health professionals, user facilities, consignees, and individuals, as appropriate, have been notified of the cease distribution and notification order or mandatory recall order and have taken appropriate action. The person named in the cease distribution and notification order or the mandatory recall order shall specify in the strategy the method(s) to be used, i.e., personal visits, telephone calls, letters, or a combination thereof, and the level of the effectiveness checks that will be conducted, i.e., the percent of the total number of health professionals, user facilities, consignees, and individuals, as appropriate, to be contacted. The agency may conduct additional (FDA) audit checks where appropriate.

§ 810.15 Communications concerning a cease distribution and notification or mandatory recall order.

(a) *General.* The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 is responsible for promptly notifying each health professional, user facility, consignee, or individual, as appropriate, of the order. The purpose of the communication is to convey:

(1) That FDA has found that there is a reasonable probability that use of the device would cause a serious, adverse health consequence or death;

(2) That the person named in the order has ceased distribution of the device;

(3) That health professionals and user facilities must cease use of the device immediately;

(4) Where appropriate, that the device is subject to a mandatory recall order; and

(5) Specific instructions on what should be done with the device.

(b) *Implementation.* The person named in a cease distribution and notification order or a mandatory recall order shall notify the appropriate persons(s) of the order by written communication, e.g., telegram, mailgram, fax, or first class letter. The written communication and any envelope in which it is sent or enclosed shall be conspicuously marked, preferably in bold red ink: "URGENT—[DEVICE CEASE DISTRIBUTION AND NOTIFICATION ORDER] or [MANDATORY DEVICE RECALL ORDER]." Telephone calls or other

personal contacts may be made in addition to, but not as a substitute for, the written communication, and shall be documented in an appropriate manner.

(c) *Contents.* The person named in the order shall ensure that the notice of a cease distribution and notification order or mandatory recall order:

(1) Is brief and to the point;

(2) Identifies clearly the device, size, lot number(s), code(s), or serial number(s) and any other pertinent descriptive information to facilitate accurate and immediate identification of the device;

(3) Explains concisely the serious, adverse health consequences that may occur if use of the device were continued;

(4) Provides specific instructions on what should be done with the device; and

(5) Provides a ready means for the recipient of the communication to confirm receipt of the communication and to notify the person named in the order of the actions taken in response to the communication. Such means may include, but are not limited to, the return of a postage-paid, self-addressed post card or a toll-free call to the person named in the order.

(6) Does not contain irrelevant qualifications, promotional materials, or any other statement that may detract from the message.

(d) *Follow-up communications.* The person named in the cease distribution and notification order or mandatory recall order shall ensure that follow-up communications are sent to all who fail to respond to the initial communication.

(e) *Responsibility of recipient.* Health professionals, user facilities and consignees that receive a communication concerning a cease distribution and notification order or a mandatory recall order should immediately follow the instructions set forth in the communication. Where appropriate, these recipients should immediately notify their consignees of the order in accordance with paragraphs (b) and (c) of this section.

§ 810.16 Cease distribution and notification or mandatory recall order status reports.

(a) The person named in a cease distribution and notification order issued under § 810.10, or a mandatory recall order issued under § 810.13, shall submit periodic status reports to FDA to enable the agency to assess the person's progress in complying with the order. The frequency of such reports and the agency official to whom such reports shall be submitted will be specified in the order.

(b) Unless otherwise specified in the order, each status report shall contain the following information:

(1) The number and type of health professionals, user facilities, consignees, or individuals notified of the order and the date and method of notification;

(2) The number and type of health professionals, user facilities, consignees, or individuals that have responded to the communication and the quantity of the device on hand at these locations at the time the communication was received;

(3) The number and type of health professionals, user facilities, consignees, or individuals that have not responded to the communication;

(4) The number of devices returned or corrected by each health professional, user facility, consignee, or individual contacted, and the quantity of products accounted for;

(5) The number and results of effectiveness checks that have been made; and

(6) Estimated time-frames for completion of the requirements of the cease distribution and notification order or mandatory recall order.

(c) Submission of status reports will be discontinued when the agency terminates a cease distribution and notification order or recall order in accordance with § 810.17.

§ 810.17 Termination of a cease distribution and notification or mandatory recall order.

(a) The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 may request termination of the order by submitting a written request to FDA. The person submitting a request shall certify that he or she has complied in full with all of the requirements of the order and shall include a copy of the most current status report submitted to the agency under § 810.16. A request for termination of a recall order shall include a description of the disposition of the recalled device.

(b) FDA may terminate a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 when the agency determines that the person named in the order:

(1) Has taken all reasonable efforts to ensure that all health professionals, user facilities, consignees, and, where appropriate, individuals have been notified of the cease distribution and notification order and have complied with the instructions to cease use of the device; or

(2) Has removed the device from the market or has corrected the device so that use of the device would not cause serious, adverse health consequences or death.

(c) FDA will provide written notification to the person named in the order when a cease distribution and notification order or a mandatory recall order has been terminated or when a request for termination has been denied.

§ 810.18 Public notice.

The agency will make available to the public in the weekly FDA Enforcement Report a descriptive listing of each new mandatory recall issued under § 810.13. The agency will delay public notification of orders where the agency determines that such notification may cause unnecessary and harmful anxiety in individuals and that initial consultation between individuals and their health professionals is essential.

Dated: June 7, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

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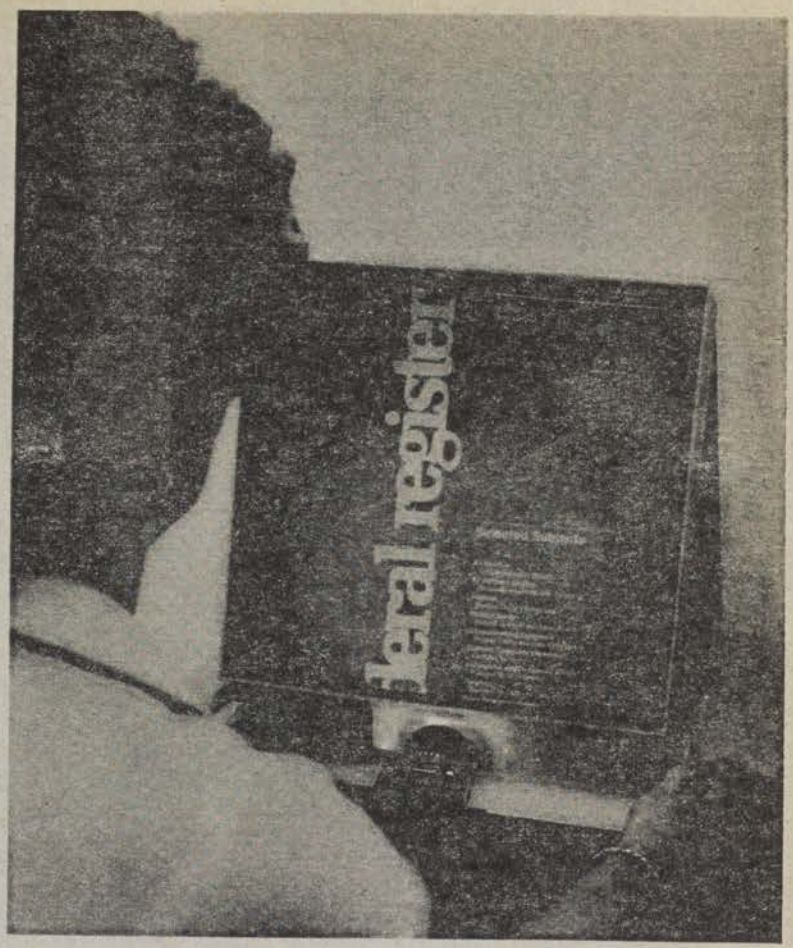

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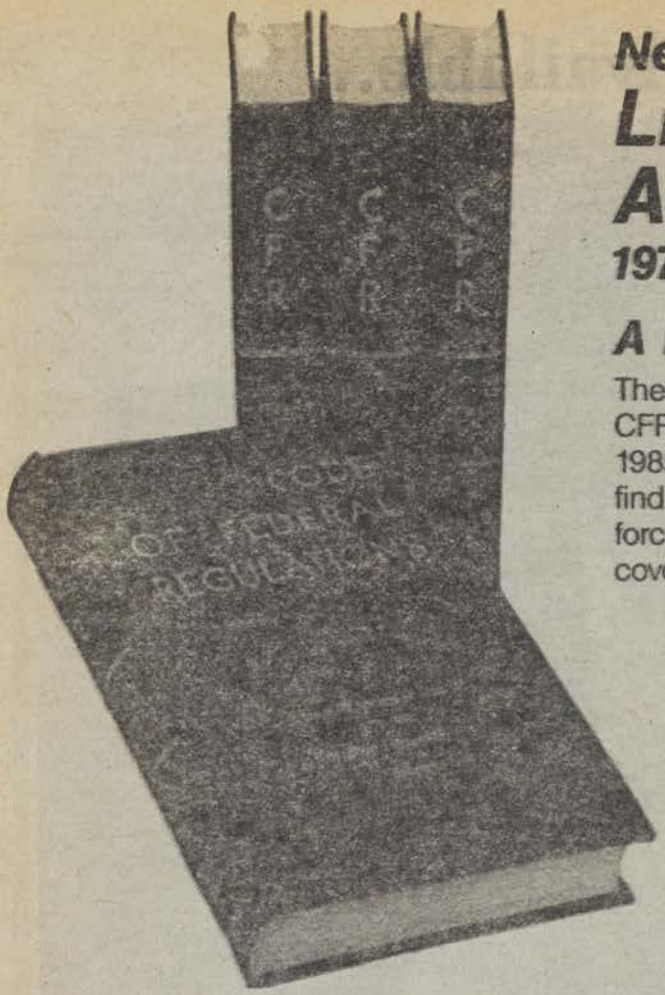

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